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THE LEGISLATION OF THE EMPIRE

1898 TO 1907









*D. Knight & Whistome, Sutton, Photo*

*Sir Courtenay Albert, K.C.B., K.C.S.I., C.I.E.  
Chairman of the Executive Committee of the Society of Comparative Legislation.*

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# THE LEGISLATION OF THE EMPIRE

BEING A SURVEY OF THE  
LEGISLATIVE ENACTMENTS OF THE  
BRITISH DOMINIONS  
FROM 1898 TO 1907

*EDITED, UNDER THE DIRECTION OF THE SOCIETY OF  
COMPARATIVE LEGISLATION, BY*

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WITH A PREFACE BY  
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IN FOUR VOLUMES  
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### 3. SOUTH AUSTRALIA.

1898 (a) Acts passed—General, 26; Private, *nil*.

**Australasian Federation.**—The Commonwealth Bill Amendment Act, No. 717, provides for the taking of a referendum upon the proposed Amended Commonwealth Bill.

**Crown Lands.**—The Crown Lands Amendment Act, No. 705, (b) provides that leases used solely for pastoral or agricultural purposes, or which are not required for sub-division may be surrendered for perpetual leases (s. 3), at rents to be fixed by the Surveyor-General (s. 4), provided the lessee does not, including such lease, hold under any tenure more than £5000 of unimproved land values, except where the land is suitable only for pastoral purposes, when the limit of the holding is a carrying capacity of 5000 sheep (s. 5). Lessees may, up to June 30, 1901, apply for reduction of rent (s. 8). Past reductions of rent are validated (s. 9). The area capable of being held as a working-man's block is increased to twenty acres. Provided the unimproved value

(a) Contributed by A. Buchanan, Esq. The Session 61 & 62 Vict. here reviewed commenced June 23, 1898, and ended March 3, 1899.

(b) See *infra*, pp. 11, 20.

does not exceed £100 (s. 10), the rate of interest on loans to block-holders is reduced from 5 per cent. to 4 per cent. (s. 11). Perpetual leases are to be in the prescribed form, and to have the effect of vesting the land leased in the lessee in perpetuity, subject to the rent reservations, covenants, and conditions of the lease.

**Pastoral Lands.**—The Pastoral Amendment Act, No. 712, (c) abolishes the classification of pastoral lands, and provides that future pastoral leases shall be for a term of forty-two years, subject to a re-valuation of the rent for the second twenty-one years with certain exceptions. In determining the rent, regard is to be had to the carrying capacity of the land, its value for agricultural or other purposes, its proximity and facility of approach to railways, ports, and markets, and all other circumstances affecting its value to a lessee (s. 2). Lessees of pastoral lands in Class I., not surrendered under the Act of 1896, may, up to December 31, 1899, obtain extensions for twenty-one years—from January 1, 1900—upon the terms of the original leases; if recommended by the Pastoral Board, the Crown not to be liable in respect of any improvements effected after the date on which the original lease would have expired (s. 4). Future pastoral leases are to contain a covenant for the expenditure of specified amounts in improvements (s. 5). Advances may be made to lessees of the cost of wire and netting to make fences vermin-proof (s. 10), to be repaid, with 4 per cent. interest, by twenty annual instalments (s. 12). The time allowed for surrendering under previous Acts is extended (s. 7). Lessees under the Act of 1893, 1895, or 1896, or who have previously surrendered, may come under this Act (s. 18). Lessees under the Act of 1893, 1895, or 1896 may apply for a reduction of rent and re-valuation of improvements (s. 19). The area which may be resumed around artesian waters, found or conserved by the Government, is increased from one to five square miles (s. 20). Act No. 706 of 1898, to amend the Vermin Acts, makes those Acts applicable to the destruction of foxes and wild dogs.

**Public Health.**—The Health Act, No. 711, repeals previous health legislation, and makes fresh and much more thorough provisions for securing the proper sanitary condition of the Colony. The execution of the Act is entrusted to a Central Board (s. 12), consisting of a chairman appointed by the Governor, and four other members, two of whom are also to be appointed by the Governor, and the other two to be elected (s. 13) triennially (s. 16), one by the city and suburban local boards, and the other by all other local boards (s. 17). The Central Board may recover from any local board the expenses incurred in carrying out any

(c) Amended by No. 770 of 1901, *infra*, p. 20, and repealed by No. 850 of 1904, *infra*, p. 36.



duties, or in exercising any power neglected by the local board (s. 19); and may exercise in respect to the whole province any powers which may be exercised by a local board with respect to its particular district (s. 20); and shall have access to all papers of local boards (s. 21).

Every municipal and district council is constituted a local board of health for its municipality or district (s. 23), charged with the execution of the Act in its own district, and particularly to abide by and carry out the directions of the Central Board (s. 24), with power to declare a sanitary rate not exceeding one shilling in the pound on the annual assessment (s. 25), and with power, if the revenue from the sanitary rate prove insufficient, to call in aid the revenue of the municipality or district (s. 28). At the request of the local boards concerned, contiguous districts may be declared a "county district" (s. 29), for which a "county board," of not less than three members, shall thereupon be constituted (s. 30) by election by the local boards forming the county district (s. 31). The powers and duties of the local boards shall devolve on the county boards, who have also power to establish and carry on chemical and bacteriological laboratories (s. 35), and to require local boards to declare and collect and pay over sanitary rates (s. 36). Every local board is to appoint an officer of health and such inspectors and officers as deemed necessary by the Central Board (s. 40); the officer of health to be approved by the Central Board, and, where practicable, to be a legally qualified medical practitioner, and to have the powers of an inspector (s. 41). Inspectors are to be appointed in writing, and to produce a duplicate of their appointment, if required, when inspecting (s. 42), with powers of entry and inspection between 9 a.m. and 6 p.m. or business hours, and to open drains (s. 43). Provisions are made for the detection (ss. 46-48) and the removal of insanitary conditions (ss. 49-58), and the recovery of the attendant expenses (ss. 59-62). Local boards are to report to the Central Board yearly, and also when directed (s. 63) to furnish monthly returns of infectious diseases (s. 64), and immediate returns of the first reported cases of certain specified diseases (s. 65), and of any outbreak of infectious disease (s. 66). The Central Board shall make an annual report to the Minister (s. 67), which is to be laid before Parliament (s. 68). The Central Board may institute formal inquiries (s. 69), and enforce the attendance of witnesses (ss. 70-71).

Part VII. deals with sanitation of sewers and sewage (ss. 75-77), of refuse (ss. 78-80), of offensive trades (ss. 81-88), of water and water supplies (ss. 90-94), of meat and meat supplies (ss. 95-110), including licensing of slaughter-houses (s. 95), providing public slaughter-houses (s. 101), inspection of cattle (s. 104), and the isolation (s. 106) or destruction of diseased animals (s. 108); the sanitation of milk and

milk supplies (ss. 111–114), including the contamination of milk (s. 111) and the licensing and regulation of dairies (s. 114); the sanitation of dwelling houses (ss. 116–123), of factories (s. 124), and lodging-houses (ss. 125, 126).

Part VIII. of the Act deals with infectious diseases: their notification (ss. 127–130), disinfection (ss. 131–141), ambulance (ss. 142, 143), and hospitals (ss. 144–146).

**Free Libraries.**—The Free Libraries Act (No. 700)(*d*) gives power to municipal and district councils to establish free libraries (s. 2) with the consent of the ratepayers (s. 3), and for the purposes of the Act to borrow moneys not exceeding the amount of ten years' free library rate (s. 5), and to declare a free library rate of not exceeding threepence in the pound on the assessed value (s. 7).

**Standard Time.**—The Standard Time Act (No. 699) fixes the mean time of the  $142\frac{1}{2}$  meridian east of Greenwich as the standard time for the province, thus moving the clocks on half an hour from the time fixed (on the hour zone system) under the Standard Time Act, 1894; and on May 1, 1899, when it is to come into operation, leaving a difference of half an hour only, instead of one hour, between the standard time of South Australia and that of Victoria and New South Wales, except the Sturt and Broken Hill District, where the standard time, having been assimilated to the South Australian Time Act, 1894, will then be half an hour behind South Australian time, presenting the artificial anomaly of the country further east having its clocks behind the country further west.

**Wages not to be Attachable.**—The Wages Attachment Act (No. 697) might more appropriately be styled the “Wages *non*-Attachment Act,” for it enacts that no order shall hereafter be made for the attachment of wages of any clerk, servant, labourer, or workman (s. 2), wages being defined to include any consideration for service done or to be done, and workman to mean any person engaged or employed in manual labour or in work of any kind, whether by time, piece-work, fixed rate, or otherwise (s. 3).

**Legitimation of Children.**—The Legitimation Act (No. 703)(*e*) provides a means for the legitimation as from birth of children, alive or dead (s. 5), born out of wedlock, but whose parents have intermarried or hereafter shall intermarry (s. 2), by registration on a declaration of parentage (s. 5), before January 1, 1900, in cases where the parents have intermarried before the Act, and in other cases within thirty days before or after the intermarriage (s. 6). Legitimation under the Act is not to affect interests vested in possession or expectancy prior to legitimation, or by virtue of a disposition made before the Act; nor is

(*d*) See *infra*, p. 24.

(*e*) *Ibid.*

legitimation to be valid if at the time of the birth of the child there was any legal impediment to the intermarriage of the parents (s. 4).

**Affiliation.**—The Affiliation Law Amendment Act (No. 702)(*e*<sup>1</sup>) extends the remedies against the father of an illegitimate child to the recovery of not exceeding £10 for confinement expenses (s. 2), including medical and nursing expenses and infant clothing (s. 3). Proceedings may be taken either before or after the birth (s. 5), and if taken before birth there must be proper medical evidence the mother is quick with child (s. 6); and money ordered is to be brought into Court, and failing the birth of the child within five months, returned to the alleged father (s. 7).

**Sale of Fertilisers.**—The Fertilisers Sale Amendment Act (No. 694)(*f*) amends the Fertilisers Act, 1894, and extends the provisions to all articles for use as fertilisers of the soil except farm manure, crude soil, and unmanufactured refuse (s. 2); provides for the appointment of inspectors of fertilisers (s. 3), to whom manufacturers, importers, and dealers in fertilisers are to notify their place of business and the fertilisers in which they deal (s. 4). Inspectors have power to enter premises and take samples (s. 5) for analysis (s. 6), and result, with names of dealer and prices, is to be published (s. 7). Dealers must brand every package so that it can be identified in the invoice (s. 8), (*g*) and are liable to penalties if in sales of exceeding one hundredweight of fertiliser they fail to deliver an invoice or to affix an identifying mark to every package (s. 9); (*h*) and the invoice must, in addition to the vendor's name and address and the identifying brands of the packages, state the guaranteed percentage of fertilising constituent in each case and its value per unit per ton (s. 10). (*i*)

**Noisy Trades.**—The Noisy Trades Act (No. 708) gives power to municipal corporations and district councils to make bylaws for the licensing and regulation (s. 4) of the trades of boiler-making and wood-cutting, and other trades proclaimed by the Governor—on the petition of a municipal corporation or district council only (s. 3)—to be noisy trades (s. 2). No licence is required unless within two hundred yards of a dwelling-house (s. 5). No noisy trade carried on under the Act or such bylaws shall on account of the noise thereof be deemed a nuisance or render subject to civil or criminal proceedings the person carrying it on (s. 6).

**Licensed Hawkers.**—The Licensed Hawkers Amendment Act (No. 710) revises the scale of fees (s. 3); prohibits the issue of licences to aliens, except upon proof of sufficient knowledge of the English language and

(*e*<sup>1</sup>) See *infra*, pp. 12, 32.

(*f*) Repealed by No. 747 of 1900, see *infra*, p. 15.

(*g*) See New Zealand Act (No. 38) of 1892, ss. 3, 4, and 5.

(*h*) *Ibid.*

(*i*) *Ibid.*



at least two years' residence in the province (s. 4); provides for the issue of general licences by the Treasurer (s. 6) and the division of the fees amongst local bodies rateably with their revenue from rates collected (s. 7). It also provides for the issue by municipal corporations and district councils of smaller fees for local licences for their respective districts only (s. 5).

**Marine Stores.**—The Marine Stores Act (No. 716) adopts many of the provisions of the Victorian Act (No. 54) of 1890, and regulates the licensing of collectors of and dealers in marine stores. Collectors are to be licensed by the Commissioner of Police (s. 3), and must leave their addresses with the police and notify any change of address; produce their licences on demand; keep marine stores received in an unaltered state for four days or until earlier sale to a licensed dealer; wear or show badges, and deliver up badges on expiry of licence (s. 5). Collectors may not lend their licences, nor sell except to licensed dealers, nor carry on business except between 8 a.m. and 5 p.m., nor use trucks unless the owner's name and address and a number is painted thereon in the prescribed manner, nor enter premises without owner's permission, nor having entered, remain after a request to leave, nor use insulting language, nor be guilty of insulting behaviour; and any collector refusing to leave premises when requested, or guilty of insulting language or behaviour, is liable to arrest by any person without warrant (s. 6). Dealers' licences and transfers thereof are to be granted by the special magistrate of the nearest local court (s. 9) after ten days' notice to the Commissioner of Police (s. 10). Dealers must conspicuously exhibit name and fact of licence on outside of premises, which are to be open only from 8 a.m. to 6 p.m. on weekdays, except Saturdays, when they are to be closed at 2 p.m.; keep a register of persons to whom trucks are let out on hire or gratuitously; keep a register of marine stores they become possessed of, showing the day and hour, and name and address of the person from whom received, and a like register of marine stores disposed of; produce registers to police when required; give notice to police of any article answering descriptions supplied by police of goods stolen; and keep marine stores in an unaltered state for seven days after receipt (s. 13). Collectors must carry on business in licensed premises only, produce licence when demanded, and let out trucks to licensed collectors only for not more than prescribed charges, and must not receive marine stores from any person apparently under sixteen years of age, nor by themselves or agents receive marine stores before 9 a.m. or after 6 p.m., or employ any person under eighteen years of age. The Act contains provisions for the revocation of licences (s. 20); power for the police to enter day- or night-licensed premises and inspect the registers and marine stores

therein (s. 22); power for the issue and execution of search warrants (s. 23), and power for licensed dealers or their assistants to seize and detain persons offering marine stores who refuse, or are unable to give, a satisfactory account of themselves or of how they became possessed of the marine stores, or who wilfully give false information, or if there is reason to suspect such marine stores to have been stolen or illegally obtained (s. 24).

**Crime: *Valueless Cheques.***—The Police Act Amendment Act, No. 715, throws upon every person who passes for value a cheque which is not paid on presentation the onus of proving that he had reasonable ground for believing that it would be paid in full on presentation, and that he had no intent to defraud (s. 2). Possession of money or property is not to be a defence against a charge grounded on want of visible means of support unless it be shown to have been honestly obtained (s. 3).

***Betting on Confidence Games, etc.***—A person who in or near any public place or house licensed for sale of liquors bets or solicits or encourages any other person to bet on any confidence game or sleight-of-hand trick or other game or trick used as a means of cheating, is to be deemed a rogue and vagabond, as is also any known or reputed cheat loitering in or near such places and having in his possession any instrument of gaming or for cheating (s. 4).

***Police.***—S. 65 of the Police Act, 1869, relating to the possession of stolen goods, is extended (s. 5). Furious driving (s. 6), unlawful knocking or ringing of door-bells (s. 8), and playing “pitch and toss” or “two up” (s. 9) are made liable to penalties.

***Bullics, or Fancy Men.***—A male person who lives wholly or in part on the earnings of prostitution, or in any public place persistently solicits for immoral purposes, is to be deemed a rogue and vagabond (s. 10); and s. 12 throws upon a person living with or habitually in company with a prostitute the onus of proving that he is not knowingly living on the earnings of prostitution.

**Taxation.**—The Income Tax Further Continuance Act, No. 709, continues the Act of 1897 for another year (s. 1). Except in the case of fraud, assessments are not to be liable to be reopened for more than three years back (s. 3); and in cases of appeal if the commissioner does not set down the appeal for hearing within the prescribed time, then the appellant may do so (s. 4).

**Married Women's Property.**—The Married Women's Property Amendment Act (No. 701) adopts the provisions of the Married Women's Property Act, 1893 (England), (*k*) as to married women's contracts and wills.

(*k*) 56 & 57 Vict. c. 63.

**1899** (*l*)      Acts passed—General, 14; Private, 2.

**Constitution Amendment.**—The Constitution Amendment Act (No. 731) (*m*) (1) disqualifies members of either House of the Parliament of the Commonwealth of Australia for nomination or election as a member of either House of the Parliament of South Australia, (2) vacates the seat of a member of either House of the Parliament of South Australia in that Parliament upon taking his seat in the Parliament of the Commonwealth if elected a member of either House thereof.

**State Railways.**—The Glenelg Railways Purchase Act (No. 726) ratifies an agreement for the purchase by the Government for £120,000 of the railways of the Glenelg Railway Company, Limited. By this purchase the only privately owned railway in the Colony is absorbed into the system of railways owned and worked by the Government.

**Crime.**—The Children Protection Act (No. 730) raises the age of consent, with some qualifications, from sixteen to seventeen years (s. 3); renders the neglect or ill-treatment of a child punishable by imprisonment or fine (s. 5), and provides machinery for bringing suspected cases of neglect or ill-treatment before the Court (ss. 5–7); makes it an offence for children under thirteen years of age to be in any public place selling, begging, or receiving alms (s. 8) during the prohibited hours of the night (s. 9); enables a Court or judge to determine in proceedings under the Act the age of a child on their own view, unless the contrary is proved (s. 11); empowers municipal corporations to regulate by bylaw the licensing of boys under thirteen for the sale on the streets of newspapers, flowers, etc. (s. 12); dispenses in cases of urgency with the need of the child being named in the information or warrant (s. 15); and empowers a special magistrate to amend any order, conviction, or warrant at any time after signature, but before execution thereof (s. 16).

**Firms' Registration.**—The Registration of Firms Act, No. 723, provides that (1) every firm-name which does not consist of the full or usual names of all the partners and (2) the name under which any person carries on business, if it contains or consists of any name or addition other than the full or usual name of such person, shall be registered (s. 4) by filing with the Registrar of Companies a statement of the (1) firm-name, (2) the nature of the business, (3) the place or places of the business, (4) the full names, usual residence, and other occupations (if any) of the persons carrying on the business (s. 5), verified by the declaration of all or one of the partners, or, if there is no

(*l*) Contributed by A. Buchanan, Esq. The session 62 & 63 Vict. here reviewed commenced June 22, 1899, and ended December 21, 1899.

(*m*) See *infra*, p. 23.



partner in South Australia, by the declaration of the agent authorised to carry on the business (s. 8). Changes in the constitution of a firm are to be registered (s. 11), and also any change in the name of the firm (s. 12). Cumulative penalties are incurred by default of registration (s. 13), and actions by firms or persons in default may be stayed until registration is effected (s. 14). A false statement under the Act for the purpose of registration is a misdemeanour punishable by two years' imprisonment (s. 15). The Registrar of Companies is to keep a register and index of firms (s. 17). The public may search and take copies of, or obtain from the registrar, certificates of registration and certified copies (s. 18), which latter are *primâ facie* evidence (s. 19). Regulations to prescribe fees, forms, and procedure may be made (s. 20).

**Vine Protection.**—The Phylloxera Act (No. 724) is designed for the protection of vineyards against the disease in grapevine known as *phylloxera vastatrix*, which has not hitherto obtained a footing in South Australia. The Act is to be administered by a board of eight members, of whom two are to be appointed by the Government, and six are to be elected by the *vignerons* (s. 7) named on the rolls of the several districts declared by the Act (s. 9), who are to vote in one district only, but to have a cumulative vote according to the area of the vineyard in respect of which they are named on the roll (s. 9). The *vignerons'* roll is to be compiled from returns to be sent in by the owners and occupiers of all vineyards exceeding one acre in extent, and is subject to annual revision (ss. 14, 15). The board may declare an annual rate per acre, the maximum varying from threepence to one shilling according to the age of the vines. Every winemaker and distiller is also to pay an annual rate of sixpence per ton on grapes purchased (s. 19). The rates are to be collected by the Commissioner of Taxes in the same way as land tax (s. 23), and to form a fund to be called the "Phylloxera Fund" (s. 22), out of which the expenses of the administration of the Act are to be paid (s. 24). Inspectors are to be appointed by the board (s. 27), with full powers of entry and search (s. 28). The board have power to guarantee suspected areas, cause the destruction of vines therein, and take other precautionary measures (s. 30). Vineyards neglected for two years may be destroyed (s. 31) without compensation (s. 34). Compensation may be paid by the board for other vineyards destroyed (s. 33), which, unless with the sanction of the board, are not to be replanted with vines within ten years (s. 40). Vineyards of less than one acre and gardens containing vines are exempt from registration and taxation, but otherwise are subject to all the provisions of the Act (s. 46).

**Life Assurance.**—The Life Assurance Companies Act Amendment Act (No. 725) provides for the issue of special policies in lieu of lost policies voluntarily (s. 2), or compulsorily under a judge's order (s. 3)

after publication of notice (s. 7), at the cost of the applicant (s. 8). The Act also provides for the transfer of policies from or to the South Australian register of any company, and such policies shall in South Australia be treated as governed by the law of that country to which the register on which they shall at the time be pertains (ss. 12, 13). Policies for the time being on the South Australian register of any company shall for the purposes of the Life Assurance Companies Act, 1882, be South Australian liabilities of such company (s. 15).

**Mining on Private Property.**—The Mining on Private Property Amendment Act (No. 728) extends the provisions as to compulsory mining leases for gold in part iii. of the principal Act to mining leases for copper, silver, and other metals also (s. 3).

**Northern Territory Land.**—The Northern Territory Land Act (No. 722) repeals part v. of the Northern Territory Crown Lands Act, 1890 (No. 501) relating to pastoral leases, which it re-enacts in an amended form. It provides for the granting of leases of pastoral Crown lands (ss. 7–22) on specified terms and conditions (ss. 23–31); provides for the valuation of, and payment for, improvement on the leased lands, as between incoming lessees and the Crown and outgoing lessees (ss. 32–47), and the transfer of possession from outgoing to incoming lessees (ss. 48–52); regulates the exercise of the power of resumption by the Crown and payment of compensation on resumption (ss. 53–58). Valuations are to be by arbitration (ss. 59–61). Lessees under former Acts may surrender and obtain leases under this Act (ss. 62, 63). Leases are not to be forfeited until after three months' notice to the lessee (s. 66), who may apply for relief to a Tenants' Relief Board (s. 67), constituted of a judge of the Supreme Court and two assessors, one appointed by each party (s. 65), which need not necessarily observe the rules of evidence (s. 76), before which, or upon which, counsel and solicitors are not permitted to appear or act (s. 75), and which has power to determine whether the forfeiture is to be enforced (s. 68) or if not, upon what terms the lessee is to have relief (s. 69). The Act provides for the issue of annual leases and commonage licences (ss. 77–80) and for the encouragement of meat preserving and boiling down and other modes of treating stock for export by the issue of leases of lands not exceeding a thousand acres rent free, on the expenditure of £2 per acre within two years in erecting suitable works on the land (s. 90).

**Northern Territory Gold Mining.**—The Gold Dredging Act, No. 720, applies only to the Northern Territory, and empowers the granting of leases of worked-out or poor auriferous lands for the purpose of dredging for gold (s. 3) for twenty-one years at a rental of sixpence per acre and a royalty of sixpence in the pound of the net annual profits (s. 4), the



lessee after the first twelve months being bound to keep employed in dredging one man for every five acres, or in the alternative to keep continuously employed fully manned machinery to the value of at least £3,000 for every two thousand acres (s. 5), applications for leases to be considered in order of priority, and if simultaneous, the order of priority to be decided by lot (s. 6).

**1900 (n)**      Acts passed—General, 23 ; Private, 4.

**Language of Acts.**—The Language of Acts Amendment Act (No. 741) provides that in Acts of Parliament, and all regulations, orders, rules, and bylaws authorised under any Act of Parliament, expressions referring to writing shall, unless a contrary intention appears, be construed as including reference to printing, typewriting, lithography, photography, and other modes of representing words in a visible form.

**Census.**—The Census Act (No. 740) makes provision for taking a census of South Australia in the year 1901.

**Taxation.**—The Taxation Acts Amendment Act (No. 734) provides that where purchase-money or rent has been reduced under the provisions of the Crown Lands Amendment Act, 1898, (o) the assessment for land tax shall be proportionately reduced, and any over-payment credited against future land tax.

**Public Service.**—The Public Service Classification Board Act (No. 748) provides that there shall be a board of three members, two appointed by the Government, and one elected by the public servants (s. 3), to consider and advise on the classification of officers in the public service, and to that end to prepare lists of all public servants, showing their work and duties, the present classification and pay, and the alterations (if any) which the board considers ought to be made (s. 6). Each officer is to be notified how he is affected, and has a right to apply for a reconsideration by the board of his case (s. 9), whereupon the board is to reconsider and report (s. 10), the officer being entitled to inspect and copy such report (s. 11). The duration of the board is limited to a period not exceeding twelve months (s. 13). (p)

**Vital Statistics.**—The Registration of Births and Deaths Amendment Act (No. 744) permits, with the consent of the Registrar-General or Deputy-General, and on payment of a fee of twenty shillings, the registration of the birth or death of a child after the expiry of six calendar months.

(n) Contributed by A. Buchanan, Esq. The session 63 & 64 Vict. here reviewed commenced June 14, 1900, and ended December 5, 1900.

(o) See *supra*, p. 1.

(p) Continued by an amending Act in 1901 (No. 774) for a period not more than seventeen months from the date of the appointment of the Board.

**State Children.**—The State Children Amendment Act (No. 750) extends the cases in which charges against children are to be heard *in camera* (s. 3), enables an officer of the State Children's Council to lay charges against children of being uncontrollable or incorrigible (s. 4), or to apply to vary maintenance orders (s. 7), authorises the secretary of the Council, under the authority of the chairman, or, in his absence, of some other member, to exercise in cases of emergency the powers of the Council (s. 9). Before any order in anticipation of the birth of a child is made under the Affiliation Law Amendment Act of 1898, (*q*) pregnancy must be proved by a duly qualified medical practitioner (s. 10); where confinement expenses are ordered, the money is to be held by the State Children's Council till the birth, or, failing birth, is to be returned to the alleged father (s. 11). Applications under the Married Women's Protection Act, 1896 (s. 14), and cases under the State Children Acts (s. 15) may be made and conducted by officers of, or persons appointed by, the State Children's Council. Justices may enforce orders by imprisonment (s. 16), and children liable to imprisonment for non-payment of money may be sent to a reformatory school instead of to a prison (s. 17).

**Workmen's Compensation.**—The Workmen's Compensation Act (No. 739) is an adaptation of the Imperial Act of 1897, (*r*) but extends to seamen (s. 2); it applies to injuries to workmen employed on railways, waterworks, tramways, electric lighting works, factories, mines, quarries, or engineering or building works, or in some employment declared by proclamation, issued on addresses of both Houses of Parliament, to be dangerous or injurious to health or dangerous to life or limb (s. 3), but not to pastoral or agricultural pursuits unless mechanical power is used (s. 14). In all cases of personal injury which disables the workman for at least one week from earning full wages, unless it is attributable, and attributable only, to the serious or wilful misconduct of the workman injured, the employer is liable to pay compensation (s. 4), subject to the scales and conditions which correspond to those set out in the first schedule to the Imperial Act, except that, in cases of incapacity from work, the compensation is limited to £300, and in cases of total incapacity the minimum weekly payment shall be seven shillings and sixpence (s. 5 and Sched. I.). Where personal injury is caused by the personal neglect or wilful act of the employer or of some person for whose act or default he is responsible, the workman may at his option take compensation under the Act or take proceedings to recover compensation independently of the Act (s. 6). If, on such proceedings, the Court find the employer is not liable independently of the Act, it is to determine whether he is liable under the Act, and, if so, is to fix the

(*q*) See *supra*, p. 5, and *infra*, p. 32.

(*r*) 60 & 61 Vict. c. 37.

amount of liability, and may set off the costs of the proceedings against the compensation awarded (s. 7). The provisions as to notices (s. 8), contracting out (s. 9), sub-contracting (s. 10), claim over against insurers on bankruptcy of employers (s. 12), and recovery of damages from strangers (s. 13) are similar to the corresponding provisions of the Imperial Statute.

**Factories.**—The Factories Amendment Act (No. 752) (s) reduces the time for giving notice of the occupation of any building as a factory from three months to twenty-one days (s. 1), reduces the number of employees necessary to constitute a factory from six to one, and provides that adjacent buildings grouped in one enclosure shall be deemed one factory (s. 2), defines “apprentice” and “improver” (s. 3), extends the operation of the Act to further places specified in the Act, or which may be defined by the resolution of either House of Parliament, but excepts agricultural and pastoral pursuits (s. 4), requires seven days’ notice of intention to close a factory (s. 5), empowers the appointment of a Chief Inspector of Factories (s. 6), extends the powers of inspectors as to inspecting and taking copies of books, pay-sheets, and wages lists (s. 7), and makes obstruction of an inspector an offence under the Act (s. 8). Every occupier of a factory must keep a record of names, work and wages, and the age, if under sixteen, of all persons employed in the factory and of all fines imposed on them, and must affix near the entrance conspicuous notices of (1) the name and address of the inspector for the district; (2) holidays and working hours; (3) copies or abstracts of the Act; (4) the name of the occupier; and (5) prices and rates of pay affixed by the Board (s. 10). Every person who gives out material for the purpose of being worked upon outside a factory for trade or sale must keep for the information of the inspector a record of the description and quantity of the work and the name and address of the worker and the price paid—which record may be published (including the name and address of the employer) as regards particulars in respect of which a conviction for breach of the Act has been obtained (s. 11). Every person who, outside a factory, wholly or partly prepares or manufactures any article or material for trade or sale must register his name and address, and every change of address, and answer all questions by the inspector as to his employer and the rates or prices paid (s. 12).

To facilitate the working of the Act and to fix minimum prices and rates for particular trades, the Governor may direct the election of boards of not less than four or more than ten members, of whom one-half may be elected by and shall consist of registered employers, and the other half by and consist of registered employees, presided over

(s) See *infra*, p. 44, and repealing Act No. 945 of 1907, *infra*, p. 54.



as chairman by a judge or special magistrate appointed by the Governor, members to hold office for twelve months only, a majority to constitute a quorum, and the chairman to have a casting vote (s. 13). The board shall, as regards the particular business in respect of which it is appointed, fix the minimum price or rate of payment payable to any persons or classes of persons (s. 15), and a copy of such rates shall be furnished to every employee by his employer (s. 16). For outside work the board shall fix a piece-work rate or price only, but for all other work may fix piece-work price or rate or a wages price or rate, or both, and shall fix a wages rate for operating at a machine in any factory (s. 17). Rates fixed by a board are to commence at a date fixed by the board not earlier than within fourteen days, and to remain in force till altered or revoked by the board (s. 18). A board shall also fix the proportionate number of, and the lowest rates of pay for, apprentices and improvers (s. 19), and may permit the employment at special rates of old and physically infirm persons (s. 20). Employment at piece-work rates or wages below the minimum fixed by the board, or for longer or different hours, or of an excess of apprentices or improvers, is a breach of the Act punishable by progressive fines and by cancellation of registration on the third conviction, with power to the board to annul the cancellation—and subject to provisos in cases of illness and slackness of trade, the allowance of overtime in cases of urgent necessity or breakdown of machinery (s. 21). When the board fixes a wages rate only, employment at piece-work rate is not allowed (s. 25). A Board may, in lieu of fixing a lowest piece-work rate, fix piece-work prices (s. 26), based on the average earning of an average worker working under similar conditions at wages rates fixed by the board (s. 27). Payment in goods is prohibited (s. 32). Agreements to accept less than the fixed rates are invalidated (s. 33).

No premium is to be paid in respect of female apprentices or improvers in the manufacture of clothing or wearing apparel (s. 35). No person is to be employed at less than a minimum weekly wage of four shillings (s. 38). Passages past moving machinery are to be a clear eighteen inches wide (s. 39). Dangerous machinery has to be fenced and safeguarded (s. 40). Every inspector of machinery under the Act is to be a qualified mechanic (s. 41), and may require machinery (s. 42), and vats, pans, etc., to be safeguarded (s. 43), and the Minister may, on the report of the inspector, prohibit the use of dangerous machines until repaired or altered, and the Governor may prohibit the employment in or about dangerous machinery of any person under sixteen years of age (s. 44). Hoists and lifts are to be protected (s. 45), and shall not be worked in any factory by any female or by

any male under the age of sixteen years (s. 46). No male under eighteen years of age, nor any female, shall clean machinery in motion (s. 47). Notice of any accident is to be given to the inspector (s. 48), who is to inquire and report to the Minister (s. 49).

Lavatories and fire-extinguishing appliances have to be provided (s. 51). The aggregate hours of labour of women and young persons employed partly in shops and partly in factories are limited (s. 53). The Minister may, in certain cases, require a separate dining or eating room to be provided for employees (s. 54), and may prohibit the use, as a factory, of unsuitable premises (s. 55). Justices, in addition to inflicting penalties for non-conformity, may order the employer to adopt certain means to bring his factory into conformity, non-compliance with which will involve a continuing daily penalty (s. 56). In proceedings under the Act the onus of proof as regards important particulars is placed on the defendant (s. 57).

**Early Closing.**—The Early Closing Act (No. 749) (*t*) constitutes Adelaide and the surrounding country a “metropolitan shopping district” (s. 6), in which any building, stall, tent, vehicle, or pack in which goods are offered or exposed for sale by retail (s. 2), except chemists, eating-houses, restaurants, ham, fish, fruit, tobacconists’, hair-dressers’ and confectioners’ shops, railway news-stalls, undertakers’ and public-houses and wine-shops (Sched. I.), shall not remain open for trade after six o’clock p.m. on more than one day in each week; shall close at one o’clock p.m. on either Wednesday or Saturday, at the option of the shopkeeper, and may, if Wednesday is chosen, remain open till nine o’clock on Saturday evening, or, if Saturday is chosen, till nine o’clock on Friday evening. The day chosen for closing at one o’clock may not be altered for three months, and one month’s notice of intention to alter must be given (s. 7). Country shopping districts may be proclaimed and times for closing fixed (s. 10) upon a memorial of a majority of the shopkeepers resident therein (s. 9). All assistants in exempted shops are to be allowed a half-holiday from one o’clock on some one week-day of every week except in a week in which there is a public holiday allowed to such assistants (s. 14). Managers and servants are liable for breaches of the Act (s. 16), and a shopkeeper charged with an offence may lay an information against the actual offender, and on proof of due diligence is to be exempt from conviction or fine (s. 17).

**Fertilisers.**—The Fertilisers Act (No. 747) repeals the Acts of 1894 and 1898 (*u*) and substitutes fresh provisions (s. 2). Every dealer in fertilisers has to notify the Inspector of Fertilisers his place of business and the distinctive names or brands of fertilisers dealt in (s. 4), pay an

(*t*) See *infra*, p. 22.

(*u*) See *supra*, p. 5, and *infra*, p. 24.

annual fee in respect of each different fertiliser, with an aggregate maximum of £5 5s. per annum, and furnish a certificate of minimum percentages of soluble constituents (s. 5), which may be amended on a week's notice and payment of a further fee (s. 6). Every person who sells any fertiliser has to give the purchaser an invoice, which is to have the effect of a warranty, showing the origin, description, and soluble constituents of the fertiliser (s. 7). Every package of fertiliser is to be distinctively marked (s. 8). It is made an offence to omit giving such invoice or to give a false invoice or description, or to describe as bone-dust or bone-meal any fertiliser containing less than 40 per cent. of tricalcic phosphate derived from bone, or to sell or describe as superphosphate or super any fertiliser containing less than 15 per cent. of water soluble phosphate and a less total than 30 per cent. of water soluble phosphate and citrate soluble phosphate (s. 9), or to sell a fertiliser which falls short of its certificate of constituents by more than a specified margin (s. 10). Inspectors may be appointed (s. 12), with powers of entering and sampling (s. 13) and analysing (s. 14), and the result may be published in the *Journal of Agriculture*, with the name of the dealer and a copy of his certificate (s. 16). A buyer of a fertiliser has the right to procure an analysis by an analyst (s. 17) appointed under the Act (s. 21), who is to give a certificate of result (s. 18) which is to be *primâ facie* evidence in proceedings in respect to the article analysed (s. 19), and the cost of the analysis is to be borne by the seller or buyer according to the result of the analysis (s. 20). Tampering with samples is punishable by fine or imprisonment (s. 22). A person convicted in respect of a sale under the Act is to have recourse over against the person from whom he bought (s. 24). The Act applies only to sales of parcels of fertilisers exceeding fifty-six pounds in weight (s. 31).

**Distillation.**—The Distillation Amendment Act (No. 742) authorises the Treasurer to grant licences to distil eucalyptus oil on payment of an annual fee of ten shillings and the licensee's giving security that eucalyptus oil only will be distilled.

**Mining.**—The Mining Act Amendment Act (No. 751) provides for the surrender of salt leases granted under the Crown Lands Act, 1888, in exchange for new leases under the Mining Act, 1893 (ss. 2-6), allows the issue of licences granting a right of search over an area not exceeding five square miles for precious stones, mineral phosphates, oil, and rare metals (s. 6) for twelve months, and to remove not exceeding twenty tons for testing purposes only (s. 10), the licensee keeping employed, for six months at least of the term, one man for each square mile and reporting any payable discoveries (s. 11), and to have a preferential right to a mineral lease, mineral (phosphate) lease, or oil lease



of forty acres, one hundred acres, or six hundred acres respectively (s. 12). In future coal, oil, or salt leases, in addition to the annual rent, there is to be reserved a royalty of sixpence in the pound of net profits (s. 14).

**Water Conservation.**—The Water Conservation Amendment Act (No. 736) is incorporated with the other Water Conservation Acts, and fixes a maximum rate of interest to be charged upon loans by the State Government to local Water Conservation Boards, and also fixes maximum and minimum rates to be levied by such boards.

**Drainage Works.**—The South-Eastern Drainage Amendment Act (No. 737) provides that a majority of land-holders, representing three-fourths in value of the land to be improved, may request the construction of certain drains specified (s. 3 and Sched. I.), which, if approved by the Commissioner of Crown Lands (s. 5), may be constructed out of moneys voted by Parliament (s. 7), the cost being deemed an advance from the Commissioner to the landholders to be benefited (s. 7). A Drainage Assessment Board is constituted (s. 8) to assess, within two years of the completion of the drain, the increase in value of land benefited thereby (s. 9), with an appeal within two months (s. 10) to a local court (s. 11), and to apportion the cost of construction amongst the landholders (s. 12), and in cases where the land is leased, between landlord and tenant, unless they have agreed (s. 15), such cost being made a first charge upon the land and repayable with interest for forty-two equal annual instalments of £5 11s. 6d. per cent., commencing three years after the date of the advance, the first three years' interest being capitalised (s. 14 and Sched. VII.).

**Bird Protection.**—The Birds Protection Act (No. 745) declares a perpetual close season for certain species, no close season at all for other species, and various close seasons of part of the year in respect of all other species, and empowers the proclamation of portions of Crown lands and the seashore and public reserves as "bird protection districts" (s. 3). Killing, possessing, selling, or exporting protected birds, and destroying or selling their eggs, or selling articles made from their skin or feathers, are made offences (s. 4) punishable by progressive fines (s. 8), which when recovered, are payable one-half to the South Australian Zoological and Acclimatisation Society and the other half to the Government (s. 9). Swivel and punt guns and the like are declared illegal devices and forfeited (s. 5).

**Vermin Destruction.**—The Vermin Districts Amendment Act (No. 746) alters the definition of a vermin-proof fence (s. 3), regulates the liabilities and obligations of adjoining owners in respect of such fences (ss. 5–12), regulates the constitution, functions and duties of vermin district boards (ss. 14–27), provides for the payment of rewards for the

destruction of foxes in fox-infested districts (s. 28), and reduces the number of persons necessary to constitute a "vermin trust" from six to three (s. 29), and allows new members to join in existing "trusts" (s. 30) and receive loans from the Government for vermin-proof fencing purposes (s. 31).

**Seed Wheat.**—The Seed Wheat Amendment Act (No. 743)(v) provides that in cases of hardship the time for repayment may be extended over a further term of five years, and that interest may be remitted wholly or in part.

**Renmark Irrigation Settlement.**—The Renmark Irrigation Trusts Loan Amendment Act (No. 733) increases the powers of the Renmark Irrigation Trust No. 1 in respect of lands on which rates are in arrear, and assimilates the trust in its powers and functions to a "district council," authorises a further loan of £16,000 to the trust for the construction of irrigation works, and reduces the rate of interest and postpones the payment of principal moneys secured by existing mortgages of lands within the trust.

## 1901 (x)      Acts passed—General, 25; Private, 1.

**Constitution.**—The Constitution Act Amendment Act (No. 779) dissolves both Houses of Parliament on March 31, 1902 (s. 2), reduces the membership of the Legislative Council to eighteen (s. 5), of whom ten shall form a quorum (s. 15), and the membership of the House of Assembly to forty-two (s. 6), of whom twenty shall form a quorum (s. 16), and reduces the number of Ministers to four, whose aggregate salaries shall not exceed £4000 (s. 22), divides the State into four councils (s. 7) and twelve assembly districts (s. 8), every assembly district being an electoral division of the council district in which it is situated (s. 10).

Subject to the provisions for dissolution, members of the Legislative Council are elected for a term of not less than six years, except that one-half the members elected at the first elections shall not occupy their seats for more than three years. In the case of a casual vacancy the member elected to fill it is to hold office only for unexpired term of the member whose seat became vacated (s. 11). Subject to the above minimum term of service one-half of the members for each council district shall retire whenever the House of Assembly shall be dissolved or shall expire by effluxion of time, and the election to supply the vacancies so created shall take place on the day of the general election

(v) See *infra*, p. 22.

(x) Contributed by A. Buchanan, Esq. The session 1 Ed. VII. here reviewed commenced July 18, 1901, and ended December 21, 1901.



of the House of Assembly (s. 12). The member of the Legislative Council to retire shall be he whose length of service since last election is the greatest, or if length of service be equal then the member who secured least votes at the election shall retire first, or if the votes were equal the order of retirement is to be determined by lot (s. 13).

Whenever the same, or a substantially similar, Bill shall have been passed by the House of Assembly in two successive Parliaments, and shall have been rejected, or failed to become law by reason of amendments made therein by the Legislative Council, it will be lawful but not obligatory upon the Governor to dissolve both Houses, or he may issue writs for the election of one, or not more than two members, for each council district, provided that no vacancies in the Council shall be filled up whilst the total number of the members shall be eighteen or more (s. 24).

**Electoral Code.**—Act No. 759 extends the provisions of the Electoral Code as to absent voters to all persons in quarantine in the State at the time of any election, irrespective of distance from any polling booth.

**Confirmation of Appointments.**—No. 756 confirms offices and appointments under the Crown notwithstanding the demise of her late Majesty, and provides that the oaths of allegiance and office taken to her late Majesty, whereby such offices and appointments were held, shall be deemed to have been taken to his present Majesty (s. 2), and ratifies and confirms all acts, deeds, matters, and things in the meantime otherwise lawfully executed and done (s. 3).

**Colonial Stocks** (No. 764).—The British Investors in South Australian Government Securities Act makes the provisions in the interest of British investors, required by the Colonial Stocks Act, 1900, (y) as the condition of allowing trustees in the United Kingdom to make investments in South Australian Government Securities—viz. that judgments obtained in the United Kingdom against the State of South Australia in respect of South Australian Government Securities, and also payments required under the Colonial Stock Act, 1877, (z) shall be satisfied by the Treasurer of the State, or his financial agent in London, out of the general revenue of the State without any further appropriation than the Act (s. 3).

**State Bank** (No. 767).—The State Advance Further Amendment Act provides that all valuations shall be made by appraisers appointed by the Bank (s. 3), who need not be licensed under the Appraisers Act, (a) where the advance is under £100 (s. 4); that the holders of ordinary State Bank Mortgage Bonds may exchange same for inscribed Mortgage Bonds or *vice versâ* (s. 5 and 6), and exempts retrospectively

(y) See *supra*, vol. i. p. 56.

(z) 40 & 41 Vict. c. 59.

(a) No. 10 of 1940.

the State Bank from income-tax, and its Mortgage Bonds from stamp duty (s. 8).

**Crown Lands** (No. 777). (*b*<sup>1</sup>)—The Crown Lands Closed Settlement and Blockholders' Loans Amendment Act provides that Crown leases for pastoral or agricultural purposes or both, which in the opinion of the Commissioner of Crown Lands may not be required for subdivision, may until December 31, 1902, be exchanged for perpetual leases (s. 3); lessees may until the same date apply for, and be granted reductions of rent (s. 4): lands repurchased for closed settlement shall be cut up into blocks not exceeding £2000, or in cases where the improvements are disproportionately valuable, not exceeding £4000 unimproved value (s. 7). Lessees under the Closed Settlement Act, 1897, must not be holders of land exceeding £2000 unimproved value, including the lands held under that Act (s. 8); and advances to blockholders are to be repaid in twenty equal annual instalments (s. 10).

**Pastoral Lands** (No. 770). (*c*)—The Pastoral Amendment Act removes the restrictions on minimum rent to be fixed for pastoral lands (s. 2); authorises the Pastoral Board until December 31, 1902, to reduce rents on application by the lessees (s. 3); prohibits the resumption of pastoral leased lands for pastoral purposes (s. 6); and reduces the rate of interest to be paid on the purchase-money and improvements from £5 to £4 per cent. (s. 14).

**Village Settlements** (No. 768).—The Village Settlements Act repeals Part VII. of the Crown Lands Amendment Act, 1893, under which village settlements were established upon a communistic basis (s. 2), and provides the machinery for effecting the change to an individualistic basis.

Existing incorporated associations are continued (s. 5), and of their lands the horticultural or commonage lands, and lands used for irrigation works are to be reserved (s. 7), and are to, in each case, constitute the district of the association (s. 9). Horticultural lands are to be sub-divided into blocks of about ten acres of as nearly equal unimproved value as practicable (s. 8). Valuations are to be made in each district (s. 10) by arbitration in case of disagreement (s. 12) of the irrigation works, and of the improvements on each horticultural block, and on commonage lands, and of the personal estate of the association (s. 10). The total of the valuation is to be deemed the total indebtedness of the association to the Commissioner of Crown Lands, and any excess of indebtedness shall be written off (s. 15) and provided for by the Treasurer in the estimates in seven equal yearly instalments (s. 16). When the valuation shall have been determined, the reserved lands are to revert to the Crown (s. 17, sub-s. 1), and the Commissioner is to

(*b*<sup>1</sup>) See *supra*, p. 1.

(*c*) See *supra*, p. 2, and repealing Act No. 850 of 1904, *infra*, p. 36.

lease the horticultural blocks on perpetual lease to individual members of the association (sub-s. 2), or to others who, by acquiring such leases, become members of the association (sub-s. 3). Each lessee is to hold for his individual use and enjoyment not more than two blocks (sub-s. 4); premiums obtained on the leasing of the blocks are to be the property of the association (sub-s. 5), and the commonage lands are to be leased on perpetual lease to, and held by, the association (sub-s. 6). The value of the improvements on each horticultural block, with interest thereon at  $4\frac{1}{2}$  per cent. together termed "member's debt," is made a first charge on the block, payable by the lessee for the time being in forty-two annual instalments of £5 14s. 6d. per cent., commencing January 1, 1904, but with liberty to pay off at any time (s. 20). The value of the irrigation works and of the improvements on the commonage lands with interest at  $4\frac{1}{2}$  per cent., together termed the "association debt," is made a first charge on all the property of the association, payable in similar annual instalments, and on default recoverable from the then members of the association in equal proportions (s. 21). Leases are to be assignable with the consent of the Commissioner (s. 22). The irrigation works are vested in the association (s. 25), and the water from time to time in such works is vested in the association to be used for the purposes of the Act (s. 26), and the control and management is vested in the association (sec. 27, sub-s. 1). The works are to be maintained to the satisfaction of the Commissioner (sub-s. 2), and the irrigation expenses are to be borne by members equally (sub-s. 3). The affairs of the association are to be managed by a board to be appointed in the manner prescribed (s. 28). So long as the charges for the "members" and "associations" debts subsist, the Commissioner is to have power (1) to expel members after notice, but subject to an appeal to arbitration (s. 29, sub-s. 1); (2) to control the association expenditure (sub-s. 2); (3) to retire trustees (sub-s. 3); (4) to require an increase of membership, and on default to cancel the association's leases (sub-s. 4); (5) to make rules (sub-s. 5); and (6) to assume the control and management of the irrigation works (s. 27). Any past credits of members with the association are cancelled (s. 31). No further advances are to be made (s. 32). An inspector of village settlements may be appointed to assist in the execution of the Act (s. 34). The commonage lands are to be worked by the association for the common good, on the principles of co-operation and equitable division (s. 35, sub-s. 1). Members are to give the association thirty-six days' labour during each six months or a cash equivalent, and to receive in the books of the association credit therefor (sub-s. 2). The association is to make up yearly accounts of expenditure and income, and after deducting one-fourth of any surplus for a sinking fund for



renewal of plant, the net balance may be divided amongst members in proportion to their respective credits (s. 36).

**Mining on Private Property** (No. 772).—The Mining on Private Property Amendment Act empowers the Minister of Mines to forfeit any lease under Part III. of the Principal Act (the Mining on Private Property Act, 1888), if the working conditions are not complied with during at least eight months in each year (s. 2).

**Seed Wheat** (No. 766).—The Seed Wheat Further Amendment Act (*d*) authorises in cases of hardship a further extension by twelve months of the time for repayment of seed wheat loans (s. 2), and in case of extreme hardship the remission by the Treasurer wholly or in part of any debt due for seed wheat under the Seed Wheat Acts (s. 3).

**Vaccination**.—Act No. 761 (*e*) exempts a parent or other person from any penalty under s. 21 of the Vaccination Act, 1882, if within six months of the birth of the child he makes a declaration in the prescribed form that he conscientiously believes that vaccination would be prejudicial to the health of the child, and within seven days thereafter delivers such declaration to the vaccination officer (s. 1). On an outbreak of small-pox, the Governor may suspend the foregoing exemption altogether, or locally, and order the vaccination or re-vaccination of contacts within a specified time (s. 2). The operation of the Act is limited to June 30, 1906 (s. 3).

**Early Closing** (No. 778).—The Early Closing Amendment Act extends the definition of “shopkeeper” in the Principal Act of 1900 (*f*) to include the “manager of any shop” (s. 2); exempts milkmen from the provisions of the Act (s. 11); modifies the stringency of the Principal Act by allowing shops to be kept open on ordinary week nights until nine o’clock with the assistance of the shopkeeper and one member of his family (s. 5), and limits the employment in a shop of young persons under sixteen years of age to fifty-two hours in any one week (s. 14).

**Licensed Victuallers** (No. 773).—The Licensed Victuallers Further Amendment Act provides for the granting to brewers only of “Brewers’ Colonial Ale Licences” (s. 2); authorising the sale of not less than two gallons of one kind of spirits, or one dozen reputed quart bottles, or two dozen reputed quart bottles, or two dozen reputed pint bottles of fermented liquor to be taken away at one time by one person, and not consumed on the premises (s. 4), and makes the holder of such a licence incapable of holding a “storekeeper’s licence,” or “wine licence” (s. 5).

**Pearls and Mother-of-Pearl Shell** (No. 763).—The Northern Territory Pearl Sale and Export Regulation Act, which applies only to the Northern Territory (s. 10), provides for the granting of annual licences

(*d*) See No. 743 of 1900, *supra*, p. 18.

(*e*) See *infra*, p. 48.

(*f*) See *supra*, p. 15.

to deal in pearls and mother-of-pearl shells to persons, not being Asiatic aliens (s. 3), of good character on payment of £10 (s. 2); prohibits the purchase of pearls or shells by unlicensed persons (s. 4) under penalty of a fine not exceeding £100, or imprisonment not exceeding six months (s. 5). Licensed persons must keep a register of purchases and produce the same to an officer of Customs when required (s. 6). Pearls and shells are to be exported only at specified ports, and forty-eight hours before exportation a return must be furnished, and, if required, the pearls and shells produced to such officer for examination (s. 7).

**Local Government.**—No. 762 validates the expenditure up to specified limits by municipal corporations and district councils, in celebrating the visit of their Royal Highnesses the Duke and Duchess of Cornwall and York to South Australia.

1902 (g)

Acts passed—General, 35.

**Constitution.**—*Disqualification for State Parliament.*—Act No. 790 removes the disability for nomination or election as a member of the State Parliament imposed by Act No. 731 of 1899 (*h*) upon members of the Commonwealth Parliament (s. 1), but enacts that no member of the Commonwealth Parliament shall be a member of the State Parliament.

**Taxation.**—*Land and Income.*—Act No. 782 provides that the next assessment of land liable to land tax shall be postponed for two years (s. 2), and therefrom shall be quinquennial instead of triennial (s. 3), that notice to the taxpayer shall not be necessary unless some alteration directly affects him (s. 4), but his right of appeal against the unaltered assessment is saved (s. 5), and also in respect of the present assessment for the extended term (s. 6). That except in cases of default or fraud taxpayers are not to be required to give account of income for more than three years back (s. 7), and that an owner of land unencumbered except for land tax arrears may surrender such land to the Crown, which land shall thereupon be deemed Crown land.

**Stamps.**—Act No. 789 makes further provisions for stamp duties and (*inter alia*) requires every company or person carrying on insurance business to be licensed annually and pay yearly a licence duty of £25. A stamp duty of 2½ per cent. is imposed upon the gross takings of every totalisator.

**Public Service.**—*Superannuation.*—Act No. 792 establishes a fund to be built up by deductions from the pay of public servants (s. 12) to provide annuities to contributors upon retirement after reaching a prescribed age, or in the event of earlier incapacity by reason of ill-health or infirmity, and annuities to the widows and orphan children of

(g) Contributed by A. Buchanan, Esq.

(h) See *supra*, p. 8.

male contributors. Provision is to be made for payments to contributors who withdraw from the public service before becoming entitled to annuities (s. 14). Contribution is optional with persons in the public service at the time of the passing of the Act, but compulsory in the case of subsequent entrants, except as regards public school teachers and police, as having funds already, and railway employees, as being already under a statutory obligation to insure their lives (s. 15). Contributions are to be deducted by the Treasurer from the pay of the contributors and paid over month by month to the board (s. 18). The fund is to be administered by a board of seven, of whom one is an official member, two are appointed by the Government, and four are elected by the contributors. Provision is made for an annual audit (s. 95) and for quinquennial actuarial investigations, and after such investigation the rates of contribution and scales of benefits are to be reviewed and altered if necessary, to ensure actuarial soundness and the fullest benefits to contributors consistent with such soundness (s. 27).

**Railways and Tramways.**—*Transcontinental Railway.*—Act No. 803 authorises the Governor to call for tenders (Part III.) and contract for the construction of a railway to bridge the gap between the existing railways in South Australia and the Northern Territory (Part II.) upon the land-grant system (Part VI.).

**Institutes.**—Act No. 800 makes provision for the amalgamation of institutes. Part I. prohibits mortgages by institutes except with the consent of the Minister controlling Education (Part II.), and empowers any institute with the consent of the Minister to transfer its property to the local authority for the purposes of a free library under the Free Libraries Act, 1898. (i)

**Married Woman's Property.**—Act No. 796 makes a married woman and her property liable under a judgment as if she were a *femme sole*, except that execution is not to issue against her property which is subject to a restraint upon anticipation (s. 2).

**Legitimation of Children.**—Act No. 793 allows legitimation of children by registration, notwithstanding the expiry of the six months after marriage of parents limited under Act No. 703 of 1898, (k) upon application to a special magistrate (s. 2).

**Marine.**—Act No. 814 extends the powers of the Marine Board to lease the foreshore (s. 6) and wharves and landing-places (s. 7), and issue licences for the use of wharves, etc. (s. 8), license and control pilots for Port Adelaide, who are to act solely for the Government and be paid by salary (ss. 14, 15). Pilotage exemption certificates are to be issued to British subjects only (s. 20). Steamship certificates of survey may be extended (ss. 25, 26). In ships on time agreement trading in

(i) See *supra*, p. 4.

(k) See *supra*, p. 4.



South Australia wages must be paid monthly or on arrival at home port (s. 32).

**Patents.**—Act No. 785 allows a patentee who has accidentally or inadvertently omitted to make a prescribed payment to apply for an extension of time for making such payment (s. 2), and on payment of £5 and the fees the time may be extended for not more than six months.

**Crime.**—*Gaming.*—Act No. 812, for the more effectual suppression of unlawful gaming, authorises the Registrar of Companies to refuse registration under the Companies Act, 1892, to any company if in his opinion it is designed directly or indirectly to contravene the Gaming Acts (s. 5), and gives power to a special magistrate to cancel the registration of a company which fails to satisfy him that its premises were not used for unlawful gaming (s. 9). The burden of proof is thrown upon the defendant when circumstances raise a reasonable suspicion that money or things have been given in contravention of the Gaming Acts (s. 4), or that cards, dice, balls, lists, or other articles have been used for unlawful gaming (s. 7). Extended powers are given to the police to forcibly enter and seize under warrants issued by special magistrates or the Commissioner of Police (s. 6).

**Larceny and Previous Convictions.**—Act No. 791 adopts the Imperial Larceny Act, (1) which amended the law with regard to the fraudulent misappropriation of money (ss. 1, 2), and extends the provisions of ss. 379 and 380 of the Criminal Law Consolidation Act, No. 38 of 1876, relating to previous convictions for felony to convictions in any State of the Commonwealth (s. 3).

**Liquor Trade.**—*Distiller's Licences.*—Act No. 784 provides that a person holding a distillation licence under any Commonwealth statute may take out a storekeeper's licence empowering him to sell on the licensed premises, to be taken away at one time by one person and not to be drunk on the premises, not less than two gallons or one dozen reputed quarts or two dozen reputed pints of liquor (s. 3), such licence to be headed "For Distillers" (s. 4), and not to be held with an ordinary storekeeper's or wine licence (s. 5).

**Early Closing.**—Act No. 795 removes the limits of time during which his shop may be kept open by a shopkeeper assisted by one member of his family (s. 2), provided he does not employ an assistant not a member of his family (s. 2).

**Dentists.**—Act No. 813 (1) regulates the practice of the profession of dentistry by means of a Dental Board. A register is to be kept, and unregistered persons using the title "dentist," etc., are liable to penalties (s. 16), and disentitled to recover fees (s. 18). The holding of diplomas

(1) 1 Ed. VII. c. 1, see *supra*, p. 77.

(1) See *infra*, p. 39.

or certificates of recognised colleges and faculties entitles to registration, and right of registration is saved to persons practising or *in statu pupillari* at the passing of the Act (s. 19). Anæsthetics are not to be administered in the absence of a qualified medical practitioner except by dentists holding certain additional qualifications.

## 1903

Acts passed—General, 30 ; Private, 1.

**Federal Senators.**—Act No. 834 enables the Governor of the State to fix by proclamation in respect of any election of senators for the State of South Australia the places at which the election shall be held, and the dates of nomination of polling and for the declaration of the poll.

**Railway Superannuation.**—Act No. 840 gives to railway employees the option of subscribing to the Public Service Superannuation Fund, established under Act No. 792 of 1902, (*m*) in place of the life assurance made compulsory by the South Australian Railways Commissioners Act of 1887.

**Officers' Retirement.**—Act No. 827 provides that all persons in the employ of the Government of South Australia—except the judges of the Supreme Court, the Commissioner of Insolvency, and the clerks of the Legislative Council and the House of Assembly (s. 2)—shall retire upon attaining the age of seventy years, but that the Governor may direct any competent and willing officer to remain in the service after attaining seventy for not more than twelve months at one time (s. 3).

**Railways Service Appeal Board.**—Act No. 829 gives to any railway employee who has been cautioned, suspended, fined, or reduced in position or pay by the officer at the head of his branch of the railway service an appeal to the Board of Appeal constituted by this Act or to the Commissioner of Railways, as the case requires (s. 7). Against fines, the appeal lies in the first instance to the Commissioner of Railways (s. 8), and from him to the Board, which has power to inflict costs upon an unsuccessful appellant (s. 9). The Board of Appeal is constituted (s. 11) of five members as follows: the Engineer-in-Chief, the Chief Mechanical Engineer, the General Traffic Manager, the Secretary to the Railways Commissioner, and one person elected by and from the employees (s. 12), the elected member to retire at the end of six years (s. 14). A Secretary to the Board is to be appointed by the Governor (s. 13). Every appeal to the Board is to be lodged with the secretary within fourteen days of the decision appealed from, and is to be heard within thirty days of being lodged (s. 19). The chairman has power to administer oaths, and if the appellant so requires evidence shall be on

(*m*) See *supra*, p. 23.



oath (s. 22). The decision of three members shall be the decision of the Board (s. 23), and every decision of the Board shall be final, and shall be given effect to by the Commissioner of Railways (s. 24). All books, papers, and documents having reference to an appeal are to be produced to the Board when required (s. 25). Regulations may be made by the Governor for the conduct of elections and the attendance of elected persons at the sittings of the Board, the conduct of appeals and of departmental inquiries, and generally for effectually carrying out the provisions of the Act (s. 26).

**Pinnaroo Railway.**—Act No. 831 authorises the construction of a railway from Tailem Bend to Pinnaroo (s. 2) after not less than 100,000 acres of certain specified land shall have been sold (s. 3), provides that the specified lands may be sold at prices fixed by the Land Board, payable with 2 per cent. interest by sixty equal half-yearly payments (s. 8), and the purchase-moneys paid for the land are to be paid to the credit of the Loan Fund, and the interest received is, until Parliament otherwise provides, to be applied towards the payment of interest on the cost of the railway (s. 12). In sub-dividing the lands the Surveyor-General is to reserve belts to be perpetually preserved as breakwinds (s. 13).

**Land Legislation.**—*Crown Lands.*—Act No. 830 is an elaborate measure divided into eighteen parts, and containing two hundred and fifty-two sections, consolidating, and in minor particulars amending, the law relating to the alienation by selling or leasing of Crown lands other than pastoral lands. Part III. deals with the powers of the Commissioner of Crown Lands to arrange for the offering for sale and sale of Crown lands (s. 11, i. to iv.), to receive purchase-money or rent after due date (s. 11, v.), to remit conditions where compliance is impossible, or would inflict hardship (s. 11, vi.), to extend time for performance of conditions (s. 11, vii.), to levy and recover amounts due, and to distrain (s. 11, viii.), to enter leased lands to search for and do all acts to conserve water (s. 11, ix.), to authorise charges for water so found or conserved (s. 11, x.), to reclaim swamp lands (s. 11, xi.), and to lease same (s. 11, xii.), to forcibly eject persons in unauthorised possession of Crown lands (s. 11, xiii.), to appoint rangers (s. 11, xviii.).

Part IV. constitutes a Land Board of four civil servants (s. 12), of whom three form a quorum (s. 16), to decide (except in cases of town lands) the area to be held by any one person (s. 21, i.), and the price or rent (s. 21, ii.), consider applications for land (s. 21, iii.), if necessary examine applicants, objectors, and witnesses (s. 21, iv.) under oath (s. 24), in prescribed form (s. 26), or affirmation (s. 27).

Part V. specifies the lands which may be offered on lease or under agreement (Div. I.), provides for the classification of lands and

applications (Div. II.), provides for perpetual leases (Div. III.) at a rent subject to re-valuation every fourteen years (s. 42), sets out the requirements of agreements under this part of the Act (Div. IV.), provides for the re-valuation of rent on renewal of leases with right of purchase (Div. V), sets forth the provisions applicable to leases and agreements (Div. VI.).

Provisions are made in Part VII. for miscellaneous leases for grazing and cultivation (ss. 75, 76), guano and other deposits (s. 77), the resumption of wells and watering-places upon payment of compensation (s. 79), and the leasing of lands so resumed for water (s. 80). Leases may be granted for sites for business purposes in thirty populated districts (s. 80, iii.) or for other purposes (s. 80). Leases under this part may be granted of educational lands (ss. 82, 83), and of forest reserves (ss. 84-86).

Part VIII. confirms and continues the constitution of certain village settlements or associations (s. 87), provides that the lands set apart to form the district of the association shall so far as consisting of horticultural lands be sub-divided into ten-acre blocks, and so far as consisting of commonage land into blocks (s. 90). Valuations are to be made of the irrigation works in each district, the improvements and the personal estate of each association (s. 93), and the total valuation shall be deemed the total indebtedness of the association to the Government, and any excess of indebtedness shall be written off (s. 97). The amount so written off and also the total indebtedness of any association closed is to be provided by the Treasurer on the Estimates by equal instalments during the next succeeding seven years (s. 98). Leases of the blocks may be granted to individuals charged with amount of the valuation as a debt payable with interest at  $4\frac{1}{2}$  per cent. in forty-two equal annual instalments (Div. III.). The irrigation works in any district are to remain the property of the Commissioner until the charges are satisfied (s. 106), but the water is to be the property of and used by the association (s. 107), which is, subject to the direction of the Commissioner, to control the works (s. 108, i.), keep them in repair (s. 108, ii.), the irrigation expenses being borne by the members of the association equally (s. 108, iii.). The affairs of the association are to be managed by a board (s. 109), subject to the power of the Commissioner to expel any member of the association (s. 110, i.), to control and direct the expenditure (s. 110, ii.), to require any trustee to retire (s. 110, iii.), to require an association to increase its members (s. 110, iv.), and to make rules for its management (s. 110, v.). The commonage lands are to be worked for the common good and benefit of the members, and may be sub-let by the association (s. 116, i.). Members of the association are to contribute labour towards the

maintenance and working of the irrigation works and the care and cultivation of commonage lands (s. 116, ii.). Accounts of the working of the commonage lands are to be prepared annually, and after providing for proper outgoings and a sinking fund to cover depreciation and renewal, the surplus is to be divided amongst members in proportion to their credits in the books of the association (s. 117). All disputes of a civil nature between members are to be settled by arbitration (s. 118).

Part IX. contains the provisions relating to homestead blocks which may be held under perpetual lease or agreement under Part V. of the Act (s. 123), but the value of the unimproved fee simple must not exceed £100 (s. 124), and the lessee or purchaser (or some member of his family (s. 133) must personally reside on the land for nine months in every year (s. 125). The Commissioner may, at the request of the holder, after notice in the *Government Gazette*, endorse the lease or agreement "Protected Homestead Block" (s. 129), whereupon no subsequent encumbrance by the blockholder, except a loan agreement under Division VI. of this part of the Act, shall have any validity, nor shall the block be liable to execution for debt or pass to a trustee in insolvency or become, on the death of the holder, assets for the payment of debts, unless expressly so provided by his will, but the endorsement may be cancelled and the protection removed at the request of the blockholder (s. 130). Cultivation in vines or fruit trees for seven years shall entitle to certain reductions in rent or purchase-money (s. 131). Either husband or wife may hold a homestead block, but not both at one time (s. 132). A block may be assigned or sub-let when the Commissioner is satisfied the holder is unable to continue in occupation (s. 134), and a lessee having complied with the provisions of his lease and repaid all loans may surrender his lease and obtain an agreement or perpetual lease (s. 135). Blockholders may obtain from the Treasurer an advance (s. 139) not exceeding one-half the value of his improvements and not exceeding £50 at any one time (s. 141) out of the "Blockholder's Loan Fund," constituted under the Act out of moneys to be provided by Parliament (s. 136), upon entering into a loan agreement in the prescribed form (s. 143), for repayment with 4 per cent. interest by twenty equal annual instalments (s. 144).

Part X. deals with closer settlement, for which purpose the Commissioner is empowered to repurchase land at a cost not exceeding £300,000 in any two years upon the recommendation and valuation of the Land Board and Surveyor-General (s. 151). Lands so repurchased shall, except what is required for town lands or public purposes, be cut up into blocks not exceeding £2000 unimproved value (s. 152, ii.), or in cases where the value of the improvements is disproportionate,



into blocks not exceeding £3000 unimproved value, or if the land is suitable only for pastoral purposes, into blocks not exceeding £4000 unimproved value (s. 152, iii.). Notice is to be given in the *Government Gazette* when blocks are open for purchase, with full particulars (s. 152, vii.) of values fixed by the Board (s. 152, vi.), and the blocks shall be allotted by the Board (s. 152, vii.) to purchasers who enter into agreements to pay the purchase-money with not less than 4 per cent. interest by sixty equal half-yearly instalments (but with the right to complete after six years) (s. 153, i.), and to expend in substantial improvements during each of the first five years a sum equal to £3 per cent. of the purchase-money, but with a right to have reckoned in this account so much of his purchase-money as was for improvements (s. 153, iii.). If allotted on personal residence, the agreement is to contain a provision for the purchaser to reside on the land for nine months in each year (s. 155). No block shall be allotted to any person, except under s. 156, iii., who is or would thereby become the holder of land of more than £2000 unimproved value (s. 157), nor is the transfer of any agreement to be permitted to any such person (s. 158). Repurchased lands remaining unallotted for a year may be let on miscellaneous lease or may be sold at auction on terms one-fourth cash and the balance payable by five yearly instalments with interest at 4 per cent. (s. 159). Moneys received by the Commissioner in respect of repurchased lands for interest or rent shall be paid into general revenue (s. 162, II.), and moneys repaid on account of principal shall be paid to the credit of the Land Repurchase Loan Fund and shall be used for the redemption of stock or for the purchase of land under this Act (s. 162, I.). A statement is to be prepared each year by the Surveyor-General and laid before Parliament showing the amount advanced from the Loan Fund and the amount of interest thereon, the amount received for principal and interest from purchasers, and the amount in arrear (s. 163). The Governor is to appoint an officer of the Crown Lands Department as Receiver of Rents (s. 164), who is to have power to enforce payment (s. 165), extend time for payment (s. 166). Failure to pay within six months after demand by the Receiver is to render an agreement liable to forfeiture (s. 167), which may be cancelled by *Gazette* notice and the land re-offered *de novo* (s. 168).

Part XI. contains the provisions relating to surrenders. Any lessee may surrender his lease, but the surrender shall not take effect until accepted by the Governor (s. 170). Approved transfers may be effected by surrender and grant of new leases for the unexpired term (s. 171). Leases used only for pastoral or agricultural purposes or both, and not required for sub-division or public purposes, may be

surrendered for a perpetual lease or agreement under Part V. of the Act (s. 174) at a rent or purchase-money to be fixed by the Land Board (s. 175), subject to appeal to the Commissioner (s. 183), provided the unimproved value of the land and of all other lands held by the lessee or purchaser under any tenure shall not altogether exceed £5000, unless the land included in such perpetual lease or agreement is suitable for pastoral purposes only, and the total carrying capacity must not exceed 5000 sheep within Goyder's Rainfall Line or 10,000 without it (s. 187).

Part XII. deals with transfers, which may be approved by the Commissioner on the recommendation of the Board, but no transfer or sub-letting shall be permitted in favour of any person who would then hold under any tenure lands (other than town, suburban, pastoral, or repurchased lands) of which the unimproved value of the fee simple shall exceed £5000, or of pastoral lands (other than lands held under pastoral lease) exceeding a carrying capacity of 5000 sheep within Goyder's Rainfall Line or 10,000 sheep beyond it.

Part XIII. contains the provisions for the sales and exchange of lands and sites for buildings. Special blocks, Crown lands within hundreds offered for lease under Part V. and not taken up within two years, town and suburban lands may be sold at auction for cash (s. 190), and the purchase-moneys of lands so sold shall form a fund primarily applicable to the payment of such portion of the public liabilities as shall be specially charged thereon (s. 195). Fraudulent agreements to prevent fair competition at auction sales are declared illegal and void (s. 196), and any agreement to pay more than  $2\frac{1}{2}$  per cent. commission to an agent to purchase is made absolutely illegal and void (s. 197). Crown lands, or lands set apart, dedicated or reserved, or held under lease or agreement may be exchanged for other lands (s. 198), and the lands received in exchange shall be set aside, dedicated, or reserved for the like purposes (s. 200), or may be sold or let to the holder of the lease or agreement on the terms of the original lease or agreement (s. 199). Sites of not exceeding two acres may be granted for schools, churches, institutes, or hospitals (s. 201, i.), and sites not exceeding one acre, and not within five miles of town lands, may be granted for shops, stores, or other approved purposes (s. 201, ii.) upon payment of the purchase-money, to be fixed by valuation if necessary.

Part XIV. empowers the Commissioner to grant licences to enter specified portions of Crown and leased lands (other than perpetual or right of purchase) to cut and take away timber, gravel, stone, etc. (s. 203, i.), and to enter and occupy specific portions of Crown lands, dedicated or reserved lands, or pastoral leased lands for fishermen's

residences, manufactories, or other purposes, and except pastoral lands for depasturing (s. 203, ii.).

Part XV. gives powers to the Governor to make regulations to give effect to the Act (s. 206), which regulations shall be published in the *Government Gazette* and laid before Parliament (s. 207, i.), and have the force of law (s. 207, ii.).

Part XVI. contains miscellaneous provisions for the control of Crown lands and to define the duties and powers of Crown (ss. 212, 214, 215) and district council rangers (s. 213).

Part XVII. sets out penalties for offences against the Act, and Part XVIII. provides the legal procedure, etc. The Act does not apply to the Northern Territory.

**Northern Territory.**—Act No. 839 amends and consolidates the laws relating to mining for gold and minerals in the Northern Territory. It provides for the creation of mining districts and the proclamation of goldfields (Part II.), the issue of miners' rights (Part III.), and business and garden licences (Part IV.), specifies the provisions applicable to such rights and licences (Part V.), provides for the granting of gold-mining (Part VI.) and mineral leases (Part VII.), sets out the provisions applicable to such leases (Part VIII.), for the amalgamation of claims and leases (Part IX.), the forfeiture of leases (Part X.), the appointment and powers and duties of wardens (Part XI.), the encouragement of mining by pecuniary rewards to discoverers, subsidies to persons engaged in mining, or by the loan of boring or other machinery (Part XII.), and provisions for the inspection of mines (Part XIII.).

**Affiliation.**—Act No. 819 limits to nine months the time for which confinement expenses which have been levied in anticipation may be retained (s. 4), extends the power to issue a warrant for desertion to the case of the father of an unborn child (s. 6), and makes other small amendments in the prior legislation.

**Traffic Regulation.**—*Lights on Vehicles.*—Act 821 extends the provisions of Act No. 16 of 1872 to bicycles, tricycles, and motor-cars (s. 2), and provides that the lamp on every such vehicle shall, at the times and places mentioned in the principal Act, be carried so that the light shall be visible from approaching vehicles (s. 3).

**Local Government.**—*Municipal Corporations.*—Act No. 833 provides that service for one year as mayor, alderman, or councillor in some municipality in South Australia is necessary to make a candidate eligible for the position of mayor (s. 7), extends the powers of the corporation in respect of streets and buildings (ss. 8 to 12), defines the permanent works and undertakings (s. 14) for which corporations may borrow on debentures to an amount never to exceed three times the amount which would result from a shilling rate (s. 13, I.), repayable within



forty-two years by a sinking fund (s. 13, II.), the annual contribution to which, together with the interest on the debentures, is not to exceed the amount of a threepenny rate (s. 13, III.), and makes the interest and half-yearly contribution to the sinking fund a first charge on the rates (s. 13, IV.); contains provisions for municipal abattoirs (s. 15), as to the reclamation of lands at the expense of adjacent owners (ss. 17-19), as to the destruction of noxious weeds on its roads and lands (s. 21), and on other lands at the expense of the owner or occupier after notice (s. 20), extends the power to make bylaws (ss. 23, 24), requires any corporation or local authority carrying on tramways, gas or electric light works, or other services to publish yearly statements of accounts and balance sheets, and to fix fares and rates annually, so that the revenue shall not be less than the expenditure (s. 25). Trees may be planted (s. 26) and statues or monuments erected in or removed from the streets (s. 28). The moneys of the corporation may be expended for concerts, pension funds, honorariums for special services, retiring allowances to officers, monuments or statuary, or district trained nurses (s. 29), or public functions up to a specified limit (s. 30). Public companies, bodies corporate, and trustees holding ratable property are empowered to nominate not exceeding three persons to be enrolled on the citizens' or ratepayers' roll to exercise the rights of voters (s. 32). Part VI. prescribes penalties for damaging trees or guards (s. 34), for obstructing or depositing offensive matter on the streets (s. 36), or lingering or loitering whilst hawking goods for sale in the streets (s. 37).

**Birds.—Protection.**—Act No. 828 amends the principal Act by providing that the periods for the protection of birds may be varied both as to time and locality by proclamation (s. 2), provides for the issue of birdcatchers' licences for the Northern Territory of South Australia (s. 4), authorises the holder to catch and have possession of protected birds and to sell and export the same (s. 3).

**Swine Fever.**—Act No. 835 is a measure to cope with swine fever by authorising the quarantining or destruction of infected swine and articles used in connection with them (s. 2), the owner of destroyed swine to be entitled to be compensated (s. 3) at three-fourths of the current value of healthy stock (s. 4).

**Fences.**—Act No. 826 makes an occupier who avails himself of a dividing fence of which he is not the owner or towards the cost of which neither he nor any previous occupier has contributed liable on three months' notice to pay to the owner one-half of the value, but provides that he shall not be liable in respect of a fence not capable of resisting the trespass of great cattle unless he shall depasture sheep on the abutting land (s. 2); provides the machinery where the adjoining owners are not agreed as to the position of the boundary to have the line



defined by a licensed surveyor (ss. 3, 4, and 5), at the cost of the parties in equal shares, unless one of the adjoining owners before the survey has correctly defined the boundary, in which case the cost is to wholly borne by the other of them (s. 6).

**Fertilisers.**—Act No. 825 (*m*<sup>1</sup>) requires the dealer to set forth in the invoice or description of any fertiliser sold by him the exact percentages of the constituent parts as shown in the certificate delivered by the manufacturer or importer in pursuance of the principal Act (s. 4).

**Moneylenders.**—Act No. 820 empowers the Court in proceedings taken by a moneylender to give relief if satisfied that the interest charged in respect of the sum actually lent is excessive, or the amounts charged for expenses, inquiries, fines, bonus, premium, renewals, or any other charges are excessive, and that in either respect the transaction is harsh and unconscionable, and to re-open previous dealings although purported to be closed, and to relieve against payment of any sum in excess of the amount adjudged, having regard to the risk and all the circumstances of the case to be reasonable, and if any such excess has been paid to order repayment thereof by the creditor, and to set aside, revise, or alter any security or agreement, and if parted with to order the moneylender to indemnify the borrower (s. 1, sub-s. 1), and the Court may exercise the like powers at the instance of the borrower or his surety, and that before the time for repayment shall have arrived, any contract or agreement to the contrary notwithstanding (s. 1, sub-s. 2). And the power may be exercised on any application by a moneylender to prove in bankruptcy proceedings (s. 1, sub-s. 3). The provisions are to apply in every transaction which is substantially one of money-lending by a moneylender whatever its form may be (s. 1, sub-s. 4). False, misleading, or deceptive representation or promises, or dishonest concealment of material facts in the business of moneylending fraudulently to induce or attempt to induce borrowing is made a misdemeanour rendering liable on indictment to imprisonment not exceeding two years or a fine not exceeding £500, or both (s. 2). "Moneylender" is defined as any person whose business is or is held out to be moneylending (s. 3), except pawnbrokers carrying on business in accordance with statutory provisions (s. 3 (a)), registered friendly and building societies (s. 3 (b)), bodies corporate (s. 3 (c)) and persons *bonâ fide* carrying on the businesses of banking, insurance, or any business not having for its primary object the lending of money (s. 3 (d)).

**Savings Bank.**—Act. 824(*n*) alters the number of trustees from twelve to six (s. 4), to be appointed by the Governor (s. 6), of whom two shall retire at the end of each alternate year (s. 7), and of whom

(*m*<sup>1</sup>) See *supra*, p. 15.

(*n*) See *infra*, p. 57.

four shall constitute a quorum (s. 10); prohibits deposits by any incorporated or municipal company or body trading for pecuniary profit or gain (s. 12), fixes the minimum deposit at one shilling, and the maximum, except in the case of legally established friendly societies, at £500 (s. 14); provides that interest shall be allowed on the minimum monthly balance on deposits up to £250 (s. 16), but no interest on deposits in excess of that sum except in the case of friendly societies, to whom interest may be allowed on the excess at a rate not exceeding half the rate allowed to ordinary depositors (s. 22); provides that deposits by a married woman shall belong to her in her own right beneficially as if she were a *femme sole* of the age of twenty-one years (s. 17); gives power to the bank in respect of the credit balance not exceeding £100 of a deceased subscriber upon non-production of probate or administration within three months after the death, either to pay to the person in the trustees' opinion entitled, or at their discretion to administer by payment of funeral expenses and debts of the deceased depositor (s. 18); empowers the trustees to invest the funds of the bank (s. 19) on securities of any State of the Commonwealth or guaranteed by the State of South Australia, (1) on securities of or guaranteed by the Commonwealth, (2) on bonds, debentures, or mortgages of any municipal corporation in South Australia, (3) on deposit in any bank carrying on business in South Australia, (4) or on deposit at the treasury at Adelaide, (5) extends the audit provisions of the principal Act to the securities of the bank (s. 21); empowers the trustees to set apart not exceeding one-fifth part of the profits of each year for a reserve fund, which shall not exceed 4 per cent. on the total deposits for the time being, to meet any loss or deficiency in any year (s. 22).

1904

Acts passed—General, 31; Private, 2.

**Electoral.**—Act 876 provides that any persons not under twenty-one years of age, whether male or female, married or unmarried, who has lived in South Australia for six months continuously, is a natural-born or naturalised subject of the King, and whose name is on the electoral roll of any House of Assembly district, shall be entitled to one vote for the election of members of the House of Assembly (s. 4 [1]), unless of unsound mind or attainted of treason or convicted and sentenced, or subject to be sentenced, for one year or more for an offence in any part of the King's dominions (s. 4 [2]). The returning officer for any House of Assembly district may direct any names in the corresponding Commonwealth roll which do not appear on the State roll to be added to the State roll (s. 5), and to prevent undue delay electoral information or matter may be communicated by telegraph.

**Income.**—Act No. 861 renders income derived from shipping taxable (s. 12), alters the mode of ascertaining the taxable amount of income of companies (s. 17), and allows a deduction from the taxpayer's income in respect of the services of children over sixteen years of age (s. 24).

Act No. 894 reduces the amount of income exempt from income tax from £200 to £150 (s. 2), and abolishes exemption if income exceeds £400 (s. 4), or if the taxpayer had been out of the State for twelve consecutive months at the time of the passing of the Act (s. 5). Income derived from land of less than £1000 unimproved value and produced by personal exertion is exempted from income tax (s. 10).

**Murray River.**—*Barrage.*—Act No. 873 authorises the construction of a barrage near the mouth of the River Murray to prevent the influx of salt water and to secure the navigability of the river (Part I.), and contains provision for the rating of lands to be benefited by the works (Part II., III., and IV.).

**Pastoral Lands.**—Act No. 850 (*n*<sup>1</sup>) consolidates the law relating to the pastoral lands of the Crown. It is an elaborate measure of 145 clauses. Part II. constitutes Pastoral Board with powers to deal with pastoral lands. Part III. prescribes the mode of offering lands for lease. Part IV. relates to applications and leases and re-letting, Part V. to rents, valuations, and re-valuations, Part VI. to improvements, Part VII. to resumptions and surrenders, Part VIII. to occupation by outgoing and possession by incoming lessee, Part IX. to travelling stock, Part X. to water, Part XI. to vermin and wire netting, Part XII. to special leases to discoverers or for inferior land, and Part XIII. constitutes a Tenants' Relief Board, composed of a judge of the Supreme Court and two assessors, to which a tenant may apply for relief against forfeiture for any cause other than non-payment of rent.

**Northern Territory Tropical Products.**—Act No. 874, to encourage the growth of cotton and other tropical products, enables the Governor to enter into an agreement with any intending grower to grant the use for fourteen years of not exceeding 5000 acres on terms of cultivation of one-twenty-fifth to one-fifth of the area, and payment of 1½*d.* per acre rent during the second seven years, with a right of purchase during the term if certain terms of cultivation have been complied with.

**Administration and Probate.**—Act No. 854 adds to the cases in which the Court may make an order authorising the Public Trustee to administer the estate of a deceased person (s. 4), or money or property subject to the trusts of a will (s. 4), authorises the Public Trustee after payment of the South Australian debts and charges to pay over the balance of an estate in his hands to an executor, or administrator, or curator duly appointed by the Court of any other

(*n*<sup>1</sup>) See *supra*, pp. 2, 20.



State of the Commonwealth or of New Zealand (s. 6), or to receive from the curator of any such other State the balance of a deceased's estate in that State (s. 7), and allows a banker after the death of an ordinary customer or depositor with a credit balance not exceeding £50 to pay such balance to the widow or widower if probate or letters of administration are not produced within three months of the death.

**Motor Traffic.**—Act No. 466 (o) gives power to the Governor to make regulations to limit the speed of motor vehicles and otherwise control their use.

**Trading Stamps.**—Act No. 859 prohibits the issue of trading stamps or coupons and the giving of money or goods for trading stamps (s. 3), and renders a person on whose behalf an offence is committed equally liable with the actual offender (s. 4), but trading stamps may be issued if redeemable at the issuing establishment (s. 7).

**Loitering.**—By the Police Act Amendment Act, No. 870, any person standing or loitering in any street, road, thoroughfare, or footpath after being requested by a constable to move on is guilty of an offence and liable on conviction to a penalty of 40s.

**Tobacco.**—By the Children's Protection Amendment Act, No. 875, any person who shall sell, lend, or give, or offer to sell, lend, or give to any child actually or apparently under the age of sixteen years any tobacco, cigar, or cigarette is rendered liable to a penalty of £5.

**Places of Public Entertainment.**—Act No. 855 provides that no such place shall be open to the public unless licensed by the mayor or corresponding local authority, who is not to grant a licence unless satisfied that reasonable provision is made against the risk of fire, to extinguish fires, and for sufficient means of egress in case of fire (s. 3); provides for the appointment of a Government inspector (s. 4), and provides that every application for an annual licence shall be laid before the local authority, to which a power of veto is given (s. 5).

**Fire Brigades.**—Act No. 860 consolidates and amends prior legislation on the subject. Part I. constitutes and incorporates the Fire Brigades Board of six members (s. 6), of whom two are nominated by the Government, one by the Corporation of Adelaide, one by other local authorities, and two by contributory insurance companies (s. 9), in which is vested the general control of fire stations and brigades (s. 14). Part II. relates to the establishment of salvage corps, and Part III. to volunteer fire brigades. Part IV. relates to the appointment of a superintendent, his duties and powers. Part V. provides that the annual expenditure by the Board shall be contributed in the following proportions: three-ninths by the Government, four-ninths by the insurance companies ratably with premium income, and

(o) Repealed by No. 938 of 1907, *infra*, p. 50.



two-ninths by the local authorities. A schedule sets out the charges recoverable from the owner of uninsured property for attendance of the fire brigade.

**District Councils.**—Act No. 863 modifies previous provisions as to voters' rolls (Part II.) and elections (Part III.). Part IV. extends the powers of the local authorities in respect of lighting (Div. I. and II.), permanent works and undertakings (Div. III.), abattoirs (Div. IV.), footways (Div. V.), reclamation of lands (Div. VI.), noxious weeds (Div. VII.), and generally (Div. VIII.). Part V. extends the power of making bylaws.

**Fisheries.**—Act No. 864 provides for the regulation of the fishing industry and the protection and propagation of fish. Inspectors may be appointed, close seasons may be proclaimed, use of devices may be regulated or declared illegal, minimum weight of fish to be taken prescribed (s. 4), hatcheries may be established, the destruction of cormorants and other enemies of fish paid for (s. 5), fish unfit for human consumption may be destroyed by any inspector (s. 8), without compensation (s. 9). This Act is amended by Act No. 901 of 1905, which substitutes fresh provisions for the issue of licences, fixes the minimum weight at which whiting and sand-whiting may be taken at four ounces (s. 7), and prohibits bunt nets with a mesh of less than one inch and seven-eighths of an inch (s. 8).

**Industrial Legislation.**—*Workmen's Compensation.*—Act No. 857 declares that in the case of a workman employed in or about a factory, but engaged elsewhere on the duties of his employment, the place where he is so engaged shall be deemed to be the factory of the employer (s. 2), and provides that in the case of a longshore man compensation in case of injury shall be computed as if his average earnings were £2 per week whether by one or several (s. 5).

**Minimum Wages and Rates.**—Act No. 872 (*p*) provides for the election by employers and employees in the clothing trade of boards to fix the minimum price or rate to be paid to any woman, young person, child, or boy between the age of sixteen and twenty-one years.

**Furniture Manufacturers.**—Act No. 856 is a measure aimed at Chinese cabinet-makers, although they are not named. It provides that all furniture manufactured or prepared wholly or partly for sale in South Australia must be indelibly stamped with the name of the manufacturer (s. 5), which it is made an offence to alter or erase (s. 3). Inspectors are to be appointed with power to enter any place where furniture is kept for the purpose of trade and examine the furniture and question the owner or importer (s. 4), and seize the furniture in case of offence (s. 7).

**Dentists.**—Act No. 871 (*p*<sup>1</sup>) modifies the constitution of the Dental Board (s. 4), and the qualifications by examination (s. 6) or otherwise (s. 12), for registration as a dentist, and provides for payment of an annual licence fee as a condition precedent for practising as a dentist (s. 18).

## 1905

Acts passed—General, 29 ; Private, nil.

**Redemption of Public Securities.**—Act No. 896 authorises the Treasurer, for the purposes of redeeming bonds and Treasury bills amounting to £7,772,200, falling due between January 1, 1907, and October 1, 1910, to sell inscribed stock with a currency of not less than fifteen or more than thirty years, or Treasury bills with a currency of not more than seven years, such stock or bills to carry interest not exceeding £4 per cent. per annum.

**Leave of Absence.**—Act No. 900 provides that persons who enter the public service after the passing of the Act shall be entitled to one-half only of such leave of absence as might heretofore have been granted under the Civil Service Acts of 1881 and 1894 (s. 2), and the provisions of the Act of 1894 relating to long leave are retrospectively extended to all those Government employees who did not originally before come within it.

**Locks.**—Act No. 902 authorises the construction of weirs, dams, locks, and other works for navigation and irrigation on the River Murray. Part II. contains the powers to construct works. Part III. provides for the control and use of the water, and authorises the imposition of tolls and charges in respect of navigation and irrigation ; and other parts contain the necessary machinery provisions.

**Swamp Lands.**—Act No. 899 : Part I. empowers the Commissioner of Crown Lands to reclaim and let swamp lands. Part II. modifies the terms for payment of purchase-money of closer settlement lands, and Part III. extends to a carrying capacity of 10,000 sheep the maximum holding of a proposed transfer of a lease (other than a pastoral lease) of land suitable only for grazing, and gives relief in the shape of extended time for payment of the rent of such lands which may be in arrear.

**Mining.**—*Gold Dredging.*—Act No. 881 enables the granting of leases for the purpose of gold dredging of mineral lands which have been worked for alluvial gold but are no longer capable of being profitably so worked, or of mineral lands too poor for profitable working as alluvial or reefing claims.

**Education.**—*Amendment.*—Act No. 892 renders compulsory a (*p*<sup>1</sup>) See *supra*, p. 25.

specified number, varying according to circumstances, of attendances at school week by week by children in country districts in lieu of previous provisions requiring attendance on thirty-five school-days in each school quarter.

**Apportionment.**—Act No. 898 makes annuities, salaries, pensions, dividends, rents, and periodic payment in the nature of rent apportionable as if the same accrued from day to day.

**Juries.**—Act No. 891 empowers the Court on trials for felony other than murder to allow the jury before they consider their verdict to separate, as theretofore juries might be permitted to separate on trials for misdemeanour.

**Police Prisons.**—Act No. 884 provides for the proclamation of Police Prisons, and enables Courts to direct that imprisonment for terms not exceeding one month be carried out in a Police Prison in lieu of a gaol.

**Opium.**—Act No. 890 prohibits all traffic in opium except by wholesale druggists and registered chemists (s. 4), or as a medicine under the authority of a duly qualified medical practitioner, the penalty on a first conviction being a fine of not less than £5 or more than £20, and on a second conviction of not less than £10 nor more than £50, or three months' imprisonment, or both (s. 3), any Asiatic alien being subject to the additional penalty of deportation to his domicile of origin (s. 5). The manufacture of opium in any form suitable for smoking is made an offence punishable by fine of £10 to £50 (s. 6). Keeping a place for opium-smoking is also made an offence punishable on a first conviction by fine of £10 to £50, and on a second conviction by not exceeding twelve months' imprisonment (s. 7).

**Vermin Destruction and Fencing.**—Act No. 905, which consolidates and amends the law upon this subject, is an elaborate statute of two hundred and sixty-four clauses, divided into seven parts. Part II. relates more particularly to vermin destruction, provides for the appointment of vermin inspectors (Div. I.), the destruction of vermin on Crown lands (Div. II.), the powers and duties of local authorities (including vermin boards) (Div. III.), and destruction of vermin by owners and occupiers (Div. IV.). Part III. constitutes vermin-fenced districts and vermin boards and contains the machinery for the election of members (Div. IV.), appointment of auditors (Div. V.), carrying out works (Div. VI.), dealing with revenue and expenditure (Div. VII.), rating (Div. VIII.), raising loans (Div. IX.). Part IV. regulates vermin fencing by vermin trusts, Part V. vermin fencing by the Crown, and Part VI. by owners and occupiers, and Part VII. contains provisions for the enforcement of the Act.

**Homing Pigeons.**—Act No. 883 makes it unlawful for any person other than the owner to destroy or catch homing or racing pigeons



(s. 3), or to enter any enclosed land for the purpose of doing so (s. 6), under a penalty of not more than £5, in addition to the full value of the pigeon killed or caught to be paid to the owner thereof (s. 4), but the provisions of the Act do not extend to the owner or occupier of improved or cultivated land destroying any homing pigeon actually on such land (s. 5).

**Travelling Stock.**—Act No. 889 provides that where horses, cattle, or sheep are being driven or travelled more than fifty miles the person in charge must have a way-bill containing particulars of the stock, their brands and marks and health (ss. 2, 3), which may be examined by any inspector or other authorised person, who is empowered to seize and impound any stock not included in such way-bill, and of which the person in charge is not able to give a reasonable account (s. 4). Poundage fees and disbursements are payable by the owner and are recoverable from the drover if the owner of the travelling stock prove himself blameless (s. 5). In the event of a lost way-bill provision is made for issue by an inspector or other authorised person of an interim way-bill, upon payment of a fee of £1 (s. 6). The introduction from any other State of sheep marked by a straight cut off the ear or cropped is prohibited under a penalty of £5 for each sheep (s. 7). Regulations may be framed to carry out the Act (ss. 8, 9).

**Local Option.**—Act No. 897 repeals the local option provisions of the Licensed Victuallers Amendment Act, 1896, and provides for a local option petition for a poll (s. 4 [1]), and for its verification by the returning officer of the coinciding electoral district (s. 4 [2]). Upon the petition being verified the Governor is to direct a poll of electors of the district to be taken and, pending the taking of the poll, prohibit the issue of any new licences in the district (s. 5 [1]). The resolutions to be submitted to the electors in respect of each of the classes of licences, (1) publican's, (2) wine, (3) storekeeper's colonial wine, (4) storekeeper's, and (5) clubs, are to be four in number as follows:—

- (1) That the number of existing licences be reduced by one-third.
- (2) That the number be reduced by one-sixth.
- (3) That the number be not increased or reduced.
- (4) That the number be increased in the discretion of the Licensing Bench (s. 5 [3]).

A separate ballot paper is to be issued to each elector for each class of licence (s. 5 [4]), and the elector may record one vote on each ballot paper (s. 5 [5]). If the number of licences in any class be less than six, the second resolution shall not be put, and if less than three, only the third and fourth resolutions shall be (s. 5 [6]). A resolution must be carried by a majority of the votes cast, there being provision for the



votes cast in favour of the first resolution, if insufficient to carry it, being counted in favour of the second resolution, and if the votes recorded for resolutions 1 and 2 are insufficient to carry the second resolution, for all those votes to be counted in favour of the third resolution (s. 5 [7]). If either of first, second, or third resolutions be adopted, the power of the Licensing Bench to grant licences will be correspondingly limited or controlled (ss. 9, 10).

**Shearers' Accommodation.**—Act No. 887 provides that healthy and comfortable accommodation shall be supplied for shearers where more than six are employed (s. 6). Sleeping space must be not less than 240 cubic feet for each shearer, and a separate room must be provided for shearers of Asiatic race (if any). Cooking and serving of meals must be apart, and latrine accommodation such as not to pollute water supply (s. 7). Other sections provide for the appointment of inspectors and the enforcement of the Act.

**1906 (q)** Acts passed—General, 11; Reserved, 1; Private, nil.

**Public Debt, Surplus Revenue.**—Act No. 911 provides that the whole of the surplus (if any) of the general revenue of the State shall be set apart at the end of each financial year (June 30) to form and constitute a Sinking Fund to be applied in the payment of maturing Government securities or in the purchase of Government securities.

**Railways and Tramways, Ticket Scalping.**—Act No. 912 is principally directed against “ticket scalping” in connection with the Government railways. It makes the alteration or improper use of or trafficking in railway tickets or passes an offence punishable by fine or imprisonment (s. 3), imposes penalties for travelling without payment of fare (s. 4), for obtaining concession tickets by means of untrue representations (s. 5), for transferring (s. 6), or the use by other than the person to whom issued of such tickets (s. 7).

**Municipal Tramways Trust Act.**—No. 913 is an elaborate measure to ratify an agreement entered into between the Government and the whole of the existing horse-tramway companies in Adelaide and the suburbs for the purchase of their respective undertakings at an agreed price, and to constitute a Municipal Tramways Trust, in which the undertakings when purchased are to vest, and by which the lines are to be electrified. Part III. constitutes the Trust (s. 9), which is to consist of eight members, two of whom are to be appointed by the Governor, two by the Corporation of the City of Adelaide, two by the corporations of the suburban municipalities, and two by the suburban district councils (s. 10), of whom one-half are to retire every three

years (s. 16). The Governor appoints one of the members to be chairman (s. 23), who is to receive £250 per annum. Each other member is to be paid £1 per meeting, but not more than £78 in any year (s. 24). The Trust is incorporated (s. 25).

Part IV. provides that the Trust may carry on the existing horse-trams pending electrification.

Part V. provides that the main lines shall be electrified within three years (s. 33), but that certain specified extensions shall not be electrified until the receipts of the Trust are sufficient to cover working expenses, interest, and prescribed payments to a Sinking Fund (s. 34), and the Trust is given an exclusive right within a ten-mile radius to work electric trams (s. 35).

Part VI. provides that the costs of purchase and of electrification are to be paid in the first instance by the Government, which is authorised to raise the amount required by the issue of Inscribed Stock or Treasury bills bearing interest not exceeding 4 per cent. (s. 36). For the costs of construction as incurred, the Trust is to issue debentures in favour of the Treasurer for the repayment of the amount advanced by sixty half-yearly instalments, with interest at the same rate as paid by the Government (s. 38). The costs of purchase are charged on the assets of the Trust with simple interest, and are to be paid within thirty years (s. 40). Half yearly the Trust, after providing for current expenses and maintenance, is to pay over the rest of its receipts to the Treasurer, who is to apply the same in priority to the interest and sinking fund on the cost of construction, interest on the cost of purchase, in payment of any debentures held by the Treasurer, and lastly towards satisfaction of the cost of purchase (s. 41). When all moneys advanced by the Government shall have been repaid with interest the control of the Government shall cease; the assets of the Trust shall be held for the constituent municipalities and district councils, as they may agree, or, in default of agreement, as Parliament shall determine. The Government shall cease to appoint two members of the Trust, and the Trust shall appoint its own chairman (s. 45). Without prejudice to the rights of the Treasurer (s. 47), the Trust is empowered to borrow moneys to pay off its liability to the Government, or for any other purposes of the Act (s. 46).

Part VII. apportiones the liabilities of the Trust amongst the constituent municipalities and district councils, and provides for the adjustment of burdens in the event of alterations of boundaries (ss. 49, 50). The liabilities imposed upon the local bodies by the Act are to be defrayed out of a sufficient special rate to be levied under the Municipal Corporations Act, 1890, or the District Councils Act, 1887, as the case may require (s. 52).

Part VIII. defines the general powers and obligations of the Trust in relation to its undertaking.

Part IX. contains some general provisions, amongst which may be mentioned the limitation of the cost of converting the existing lines to electric traction to £12,000 per mile (s. 69), and the exemption of the Trust and its property from general, special, and local taxation (s. 72).

Part X. imposes penalties for various offences such as interference with the property or working of the Trust (s. 94), travelling without payment of fare, or improper conduct (s. 95), or the carriage of dangerous goods (s. 97).

Part XI. deals with legal procedure.

**Land Legislation: Crown Lands.**—Act No. 909 makes a few trifling amendments in the machinery of Crown Lands Acts.

**Reclaimed Swamp Lands.**—Act No. 910 provides for the management and control by trustees of lands reclaimed by the Government from being swamp lands, and proclaimed to be irrigation areas on the petition of a majority of the occupying lessees (Part II.). The board for each irrigation area is made a body corporate, and is to consist of five members, of whom one is to be a Government officer, and the other four ratepayers of the area elected by the ratepayers (Part III.), and has powers analogous to those of Local Government bodies under the District Councils Act, 1887, to appoint officers (Part IV.), conduct its meetings and business (Part V.), and to carry out works, levy rates, raise loans (Part VI.). Under Part VII. a "Swamp Lessees' Loan Fund" is constituted out of funds to be voted by Parliament (s. 44), out of which the Commissioner of Crown Lands may make advances to lessees to assist them in making permanent improvements to the capital value of the land (s. 47), the advances being limited to one-half the value of such improvements, and no advance to exceed £75 (s. 49). Part VIII. provides for the making of regulations and bylaws. Upon the abolition, enlargement, or curtailment of an irrigation area, an arbitrator appointed by the Governor is to apportion the property and obligations of the Trust (s. 63 *et seq.*), saving the right of creditors.

**Industrial Legislation, Factories.**—Act No. 915 (*r*) repeals the part of the Factories Amendment Act of 1900 (*s*) relating to boards, and substitutes other provisions which are virtually an adoption of the corresponding part of the Victorian Factories Act, No. 1975. The Governor may from time to time appoint boards of not less than four or more than ten members and a chairman to determine the lowest prices or rates to be paid to persons or classes of persons inside or outside a factory by manufacturers of clothing, wearing apparel, or furniture, bakers, butchers, curriers, or brick-makers (s. 61), or by employers in

(*r*) Repealed by No. 945 of 1907, *infra*, pp. 54-56.

(*s*) See *supra*, p. 13.



any other trade or business in regard to which resolutions shall have been carried by both Houses of Parliament that it is expedient to appoint such a board (s. 62); and in fixing such lowest prices the board is to consider the nature, kind, and class of work, the mode and manner in which it is done, and the age and sex of the workers, and any other matters which may be prescribed (s. 63). Boards are to be constituted equally of representatives of employers and employees, who themselves must respectively be or have been actual and *bonâ fide* employers or employees in the particular trade, and who are to hold office for three years (s. 7). The names of persons proposed to be appointed members of boards are to be gazetted (s. 8 (1)), and unless one-fifth of the employers or employees to be represented object to the persons recommended as their representatives, the persons nominated shall be appointed (s. 8 (3)), but if one-fifth do object then the representatives shall be elected under the machinery provided in the third schedule to the Act (s. 8 (4)). The Governor appoints the chairman of the board, who is not one of the representative members (s. 12).

In fixing prices or rates in respect of any trade or business not specified in s. 6, the board is to ascertain as a question of fact the average prices or rates (whether piece-work or wages) paid by reputable employers or employees of average capacity (s. 13 *a* and *b*); but where the average prices are not, in the opinion of the board, sufficient to afford a reasonable limit, the board may so report to the Minister, who is to refer the determination for the consideration of the Court of Industrial Appeals, which may fix the lowest prices or rates irrespective of the average prices or rates (s. 13 *c*).

Where just and expedient, special wages, prices, or rates may be fixed for aged, infirm, or slow workers (s. 13 *d*). The powers of a board may be exercised by a majority present at any meeting (s. 14). Evidence may be required to be on oath (s. 16). Prices and rates may be fixed at piece-work or wages prices and rates or both, provided that for work outside a factory piece-work rates and prices only shall be fixed, and at the request of the occupier of the factory a wage price or rate shall be fixed for operating a machine used in such factory (s. 17). In the furniture trade, where practicable, both piece-work and wages prices and rates are to be fixed (s. 18).

Where both piece-work and wages prices and rates are fixed by a board the former are to be based on the latter (s. 19). When fixing a lowest wages price or rate a board is also to fix the maximum hours per week for which such rate shall be payable, and shall fix a higher rate to be paid for hours worked in excess of such maximum (s. 20). The board, when determining prices and rates, is also to determine the proportion of apprentices and improvers to be employed and fix differential



lowest rates of pay for them, having regard to their sex, age, and experience (s. 21). The board may also fix differential rates of pay for persons under twenty-one other than apprentices or improvers (s. 22).

All apprentices bound for less than three years, unless so bound with the sanction of the Minister, are deemed to be improvers (s. 23). Where an apprentice under twenty-one has been bound for a term of not less than two years no determination of a board is to invalidate his indentures (s. 25). Where a person over twenty-one has not had full experience in a trade the Minister may licence such person to work for a specified time as an improver at the rates fixed by the board for improvers (s. 26). A board fixing the lowest wages prices or rates may require the employer to fix piece-work prices or rates based on the earnings of an average worker on wages rates under like conditions, and when such piece-work rate has been fixed it is made an offence to pay or offer, directly or indirectly, a lower rate, and in any proceedings the onus of proving the sufficiency of the piece-work rates is placed on the defendant (s. 28).

Aged, slow, and infirm workers unable to obtain employment at the minimum wage fixed by a board may be licensed by the Chief Inspector to work for twelve months at a lower specified wage, but the proportion of persons so licensed shall not, except with the consent of the Minister, exceed one-fifth of the number employed in the factory, provided, however, that one licensed slow worker may be employed in any registered factory (s. 29). Any price or rate determined by a board is to continue in force from a date fixed by the board, not less than thirty days after such determination, until amended by the board, subject, however, to amendment or revocation by the Court of Industrial Appeals (s. 30).

Determinations of a board or of the Industrial Court of Appeals are to be published in the *Gazette* and may be applied to specified local areas by order of the Governor, also to be gazetted (ss. 31 and 35). Determinations of a board are not to apply to any children of an employer (s. 32). Where a board has been appointed the Governor, by Order, may extend its scope to trades or businesses of like class and character as those for which it was appointed (s. 34). The Governor is empowered to suspend for not more than six months any determination of a board, and the board is thereupon to take evidence and re-consider the matter, and the determination amended or adhered to, as the case may be, is to take effect (s. 35). Notification of determinations of a board is to be conspicuously exhibited in the factory (s. 40). If a wages rate only is fixed it is not to be lawful to pay piece-work rates (s. 42). Employees are not to be paid in goods (s. 43) but in money only, nor can the employer and employee contract for a lower rate than that fixed by

the board (s. 44). Determinations of a board may be quashed by the Supreme Court for illegality, but are not to be otherwise challengeable (s. 46). Any direct or indirect attempt to employ at lower than the fixed rates, or to employ an undue proportion of improvers, renders liable to a penalty for the first offence of not more than £10, for a second offence of not less than £5 or more than £25, and for a third offence of not less than £50 nor more than £100, and on a third conviction the registration of a factory is to be forthwith cancelled (s. 47).

A Court of Industrial Appeals, to consist of a judge of the Supreme Court, is constituted (s. 48), with power on appeal to vary or confirm any determination of a board (s. 49). In fixing rates the Court is to be governed by the considerations laid down in s. 13 of the Act for the guidance of the board (s. 50), and if of opinion that the determination under appeal is prejudicial to the progress, maintenance of, or scope of employment in the trade or business, is to make such alterations as will remove that effect and at the same time secure a living wage to the employees affected (s. 51). A majority of the representatives either of employers or employees may appeal against a determination of the board, as may also the employers of not less than one-fourth of the employees in the trade, or not less than one-fourth of the employees themselves (s. 52 (1)), or the Minister himself without any appeal may refer a determination to the Court for consideration (s. 52 (2)).

Barristers, solicitors, or agents are not to appear before or be heard by the Court except that by direction of the Court, or by consent of the parties, either party may be so represented at its own cost (s. 52 (5)). No evidence relating to any trade secret or to the profits or financial position of any witness or party is to be disclosed or published without the consent of the person concerned (s. 52 (8)). The determination of the Court is to be final and without appeal, but may be reviewed by the Court itself if a *prima facie* case for review be made out (s. 52 (9)).

On any appeal or reference the Court is to appoint two assessors to advise on any questions relating to the determinations, who may be nominated by the employers' and employees' representatives on the board respectively, or, in default of nomination, appointed by the Court, and each assessor is to receive one guinea for each day he attends the Court (s. 53).

Females or boys under sixteen are not to be employed more than forty-eight hours in any one week or ten hours in any one day or after nine o'clock at night (s. 56 (1)) unless to meet an unforeseen press of work, when the working hours may be extended to fifty-five in one week, but so that the overtime shall not exceed one hundred hours in any one year. Notice is given to the Inspector of Factories within

twenty-four hours of the commencement of overtime work, with the reasons therefor: a record of overtime is to be kept and displayed in the factory; overtime and tea-money are to be paid daily; there is to be no overtime without the consent of the boy or female employed; if the Minister is not satisfied of the *bonâ fides* of the necessity for overtime he may give notice to the employer, and if not then satisfied he may direct the Inspector of Factories to record that the overtime working was not *bonâ fide*, and if such record be made three times within twelve months the employer is to be deprived of the advantages of these overtime provisions (s. 56 (2)). The Governor may suspend the operations of this section for not more than two months generally or as concerns particular factories (s. 56 (4)). Unless allowed by the Chief Inspector of Factories, employees are not to be boarded or lodged by the employer, his wife, or child (s. 57). Regulations may be made to carry into effect the objects of the Act and to prescribe procedure thereunder (s. 59).

**Public Health: Vaccination.**—Act No. 908 extends the Act for the abolition of compulsory vaccination, No. 761 of 1901, (t) until the year 1911, and provides that where calf lymph is used it shall, where practicable, be glycerinated.

**Companies' Winding-up.**—Act No. 914 requires an official liquidator to file with the Registrar of Companies once at least in each six months a balance-sheet and statement of his dealings in the winding-up (s. 3). On default for fourteen days any shareholder or creditor of the company may lodge a complaint in writing of the failure to file or the insufficiency (*sic*) of such balance-sheet and statement with the Registrar (s. 4), who is thereupon to issue an interlocutory summons requiring the Official Liquidator to show cause why he should not be removed (s. 5 a). Upon the return of such summons the Supreme Court or a judge thereof shall (*sic*) remove such Official Liquidator and appoint the Public Trustee to complete the winding-up (s. 5 b). The removed liquidator is upon demand to deliver over to the Public Trustee all the property and papers of the liquidating company in his possession or control (s. 6), and refusal or neglect to do so within fourteen days, or such further time as the Court or judge may allow, is made a misdemeanour, rendering him liable on conviction to imprisonment for a term of three years with hard labour (s. 7). Neither such a conviction nor removal from office is to be any bar to proceedings, civil or criminal, at suit of the Crown or any persons whomsoever (s. 8). The Act is to apply to the winding-up by the Court of a building society under the Building Societies Act, 1881.

(t) See *supra*, p. 22, and *infra*, p. 57.



1907 (u)

Acts passed—29.

**Constitution** (*Legislative Council Franchise*).—Act 920 lowers the qualification of voters at elections of members of the Legislative Council in the case of occupiers to an actual rental of £17 per annum, and, in the case of Crown lessees, to those owning improvements upon their leases to the value of £50.

Votes are also conferred upon special classes of people who from the nature of their avocations may not be rent-payers, namely, officiating ministers of religion, head teachers residing in school premises, post-masters and post-mistresses, railway station-masters, and members of the police force in charge of their respective offices.

**Coroners.**—By Act 922 a coroner is empowered to hold inquests on dead bodies or fires without a jury, unless he considers a jury desirable or a jury is directed by the Attorney-General or requested by some person interested in the subject-matter or claiming to give material evidence or by a member of the police force (s. 2). A coroner holding an inquest without a jury is to forward to the Attorney-General a statement in writing of his reasons for doing so (s. 3). A view of the body by the jury may be dispensed with unless required by the coroner (s. 5), and where possible and convenient inquests are to be held at police stations or local or police court buildings (s. 8).

**Juries.**—Act 923 throws upon litigants in the Supreme Court the daily cost of the jury in cases where the trial is protracted instead of, as hitherto, a fixed fee that practically covered the cost for one day only.

**Distress for Rent.**—Act No. 934 exempts from distrains for rent any sewing-machine, typewriting-machine or mangle the property of or under hire to a female, provided that no person shall be entitled to have more than one of each such articles protected (s. 2), and exempts from seizure under distress for rent wearing apparel, tools and implements of trade (in addition to those under section 2) to the total value of £10 at a forced sale (s. 3); but the above provisions are not to apply when the interest of the tenant has expired and seven days have elapsed after a demand in writing for possession of the premises (s. 4).

**Trustees.**—Act 944 extends the power given to trustees by the Trustee Act, 1893, by enabling a trustee, on the sale of trust property, to take a mortgage over the property sold for part of the purchase-money (s. 2); to delegate during his absence from South Australia for a term not exceeding one year all or any of his powers and discretions as a trustee, he himself, however, remaining liable for the acts and defaults of his agent (s. 3); to authorise one or more co-trustees to operate on the trust banking account (s. 5). Power is given to the

(u) Contributed by A. Buchanan, Esq.



Court, upon being satisfied that it will be advantageous to the beneficiaries, to authorise a sale by a trustee to himself unless such sale be expressly prohibited by the instrument creating the trust (s. 7). Every executor or trustee, at the request and cost of any beneficiary, is to file annual accounts in the Supreme Court, and the Public Trustee, at the request and cost of not less than one-half of the beneficiaries, is to audit such accounts (s. 8).

**Traffic Regulations: Automobiles.**—No. 938, the Motor Vehicles Act, repeals the Act of 1904, (x) and makes other provisions for the regulation of motor traffic. A registrar is to be appointed (s. 5) who is to keep a register of motor vehicles, distinguishing between motor cycles and other motor vehicles (s. 6). Owners are required, under a penalty of five pounds, to register their motor vehicles by furnishing particulars and payment of fees as prescribed (s. 7a) and may have a number assigned (s. 76). The registrar shall assign general identification numbers upon distinctively coloured plates to motor manufacturers or dealers for use on motor vehicles during trial before sale (s. 8). Plates bearing the assigned number in the prescribed size and style must be displayed so as to be easily distinguishable in the case of a motor cycle from both sides (s. 10), and, in the case of any other vehicle, from the front and rear; and numbers assigned by local licensing authorities must be distinctive in design from the number assigned by the registrar (s. 9). The registrar is also to keep a register of licences (s. 11) and grant licences for twelve months renewable annually (s. 13) to persons to drive motor cycles and other motor vehicles, and to manufacturers or dealers special drivers' licences available for *bonâ fide* employees (s. 12). Any unlicensed person driving, or any person employing an unlicensed person to drive a motor vehicle, is liable to a penalty of £10 (s. 15). Any person driving a motor vehicle must, on demand by the registrar or any police constable, produce his licence (s. 16). Driving at a speed which, having regard to all the circumstances, is or might be dangerous to life or property, renders liable to a penalty of £20 (s. 17). Between half an hour after sunset and half an hour before sunrise good lights must be carried to adequately signal approach and position (ss. 18 and 19). Bells or horns must be carried (s. 20) and sounded when necessary to warn approach or position (s. 21). Driving on footpaths (s. 21) or backwards for a greater distance than necessity or safety requires is prohibited (s. 23). If an accident occurs, or is likely to occur, to any person, whether on foot or otherwise, or to any horse or carriage, the driver must stop and remain stationary as long as reasonably necessary, and must, if required, give his name and address and, if not the owner, the name and address of the owner of the motor vehicle

(x) See *supra*, p. 37.

(s. 24). Drivers must obey the reasonable directions of any police-constable (s. 25). The local road authority consenting, the Minister may, for the purpose of race meetings or speed-tests in particular localities on fixed days, suspend the operation of the Act and substitute special conditions (s. 23). Convictions for offences against the Act in case of a licensee render the licensee liable to suspension, and, in case of a non-licensee, disqualify from obtaining a licence (s. 27). Regulations may be made to regulate speed and otherwise carry out the provisions of the Act (s. 28).

**Vermin Destruction.**—No. 940 makes provision for the simultaneous destruction of vermin during the months of January, February, and March in each year (s. 21) by requiring owners and occupiers during those months, without specific notice, to destroy vermin upon their lands (s. 24), in case of proceedings for non-compliance the onus of proof being thrown upon the defendant (s. 25).

**Merchant Shipping** (No. 917).—The Marine Board and Navigation Act Further Amendment Act, 1906, reserved for his Majesty's pleasure, received the Royal assent May 8, 1907. It adopts the provisions of the Imperial Merchant Shipping Act, 1894, (y) assimilating the remedies of the master of a ship for wages and disbursements to those of a seaman for wages (s. 6), prohibits the shipment or unshipment of goods on a Sunday (s. 7) under a penalty not exceeding £250 (s. 8), imposes penalties for unseaworthiness (s. 9), or for arriving or departing without hatches being properly secured (s. 10), provides for control, management, and maintenance of jetties and wharves by local government bodies (s. 11), and for the proper lighting of wharves (s. 12).

**Crime: Habitual Criminals.**—No. 927 provides that where a person convicted of an offence, a class included in certain categories of offences against the person (1, wounding; 2, poisoning; 3, sexual offences; 4, abortion), has been previously convicted on at least two occasions of an offence of the same class, or, in the case of offences against property, (5, robbery, extortion, burglary, etc., larceny, embezzlement, or false pretence; 6, arson; 7, forgery; 8, coinage) on at least three occasions of an offence in any of such classes, the judge may, as part of the sentence, declare such person an habitual criminal (s. 3). Previous convictions may, in addition to other authorised modes, be proved by a record or extract of a conviction certified by the officer having the custody of the records, of which judicial notice shall be taken (s. 4). Every habitual criminal, on the expiration of his specific sentence shall be detained during his Majesty's pleasure in a place of confinement set apart for the purpose (s. 5), where he shall be required to work at some trade or avocation and offered facilities for selling or disposing of the

products of his labour, of which he shall receive not less than one-half the net proceeds (s. 6). If the Governor determines that an habitual criminal is sufficiently reformed his release may be directed, when, if he remains in South Australia, he must during a period of two years report himself personally, or by letter once in every three months, to the Commissioner of Police (s. 7). If during the two years' probation he is proved before justices to have failed to report himself, or on being charged with an offence refuses to give his name, or gives a false name or address, or is convicted of being an idle or disorderly person or a rogue or vagabond, or an incorrigible rogue, or of an indictable offence or of any offence punishable on summary conviction by imprisonment exceeding three months, he may, in addition to the specific fine or imprisonment imposed, be recommitted as an habitual criminal (s. 8); otherwise at the expiration of the two years he shall cease to be an habitual criminal (s. 9). Male and female habitual criminals shall be kept apart (s. 10). The use of alcoholic liquors by habitual criminals is prohibited (s. 11). Regulations may be made by the Governor to prescribe the mode of sale or disposal of the products of the labour of habitual criminals and the disposal of the net proceeds thereof and for discipline and management (s. 12).

**Gaming.**—No. 943 is a drastic measure aimed at the suppression of gaming. Police decoys acting under orders are not to be convicted or deemed accomplices (s. 6). Being upon any street or public place for the purpose of betting or wagering renders a person liable to a penalty of £50 (s. 7). The persons in control of any sports ground attended by the public may call upon the police to remove, without a warrant, any person reasonably suspected of doing anything in contravention of the Act, and any person so removed renders himself liable to a penalty of £50 or two months' imprisonment by re-entry on the same day (s. 8). A witness other than the defendant may not claim privilege on the ground of evidence tending to incriminate, but on full disclosure becomes entitled to a certificate which frees him from prosecution (s. 9). Knowledge that premises are used for unlawful gaming is to be imputed to the owner and immediate landlord (s. 11). Totalisator investments are not to be solicited, under a penalty of £25 or two months' imprisonment (s. 12). "Faro," "Banker," "Fantan," "Two-up," "Hazard," and kindred games are declared unlawful (s. 13). Printing or publishing information regarding illegal lotteries, whether in South Australia or elsewhere (s. 14), or regarding betting, or betting on horse-races, is prohibited (s. 22); and also the selling, offering, buying, or receiving tickets, chances, or shares in such lotteries (s. 15); the forwarding money, or money parcels to the promoters (s. 17), or the exhibition of placards relating to such lotteries (s. 16), or relating to betting (s. 24),



and advertising by tipsters (s. 25). In various respects the allegations in informations are made *primâ facie* evidence and the burden of disproof thrown on the defendant (ss. 10 and 18). Secondary evidence may be given as to lotteries out of South Australia (s. 19). Mere tickets are made evidence of lotteries (s. 20). The playing of unlawful games in a place, or the use of a place for betting purposes, makes it a common gaming-house (s. 21) notwithstanding that it be open to subscribers or members of a club only (s. 25). The owner or his agent (unless ignorance or absence of reasonable grounds for suspicion be proved) and the occupier of a common gaming-house (s. 26), or of premises used as a means of access thereto (s. 27), is guilty of an offence against the Act. The owner having reasonable grounds to suspect that the premises are being used as a common gaming-house, or as a means of access, may evict the occupier and determine the tenancy (s. 28), but the Supreme Court may grant relief to the tenant (s. 29). Upon affidavit of reasonable suspicion by a superior officer of police a judge of the Supreme Court may declare a place a common gaming-house (s. 32), which declaration may be rescinded by a judge of the Supreme Court on the application of the police, or on the application of the owner, tenant, or occupier upon notice to the police (s. 33). Notice of such declaration is to be gazetted (s. 34), published twice in a newspaper circulating in the neighbourhood, and served on the owner and occupier (s. 35), after which any person found entering on or leaving such premises may be arrested without warrant, and, unless he proves a lawful purpose, is guilty of an offence under the Act and liable to £50 penalty or three months' imprisonment (s. 36). The owner of a house in contravention of the Act whilst a declaration is in force, and after notice thereof has been served on him, is made liable to a penalty of not less than £30 or more than £300 unless he proves he has taken reasonable steps to prevent such use (s. 38). Whilst such a declaration is in force the police have full power of entry without warrant and to break in if necessary and to seize instruments of gaming, documents relating to betting, and money and securities for money found thereon (s. 39). Obstructing the police renders liable to a penalty of £25 (s. 40), and the existence of bolts, bars, and contrivances for obstructing the police or giving an alarm, or for concealing or destroying instruments of gaming, is made evidence until the contrary is proved, that the premises are a common gaming-house and the persons found therein were playing unlawful games (s. 41).

**Brothels.**—Act 931 renders any person who keeps, or assists in keeping a brothel, or, being a tenant or occupier of premises, allows them to be used as a brothel; or, being a lessor or landlord or the

agent of a lessor or landlord, lets premises with the knowledge that they are to be used as a brothel, liable, for a first offence, to a fine of £20, or three months' imprisonment; for a second offence a fine of £40, or four months' imprisonment; and for a third or subsequent offence a fine of £40, and to enter into a recognisance to commit no offence against the Act within twelve months, or in default six months' imprisonment; but prosecutions must be authorised by the police authority (s. 3). Any woman found in a brothel and refusing to disclose the name of the keeper, is to be herself deemed the keeper of a brothel (s. 7). Any contract to let premises as a brothel is null and void (s. 8) and the subsequent use of premises as a brothel renders null and void the prior contract to let, and entitles the landlord to recover possession, and an innocent landlord may recover from the tenant an equitable amount by way of rent (s. 9). Police authorities may enter by day or night, and forcibly if necessary, any house *bonâ fide* believed to be a brothel (s. 10).

**Industrial Legislation: *Factories*.**—Act No. 945(z) (the Factories Act, 1907) is an elaborate measure of 168 sections, divided into ten parts, to consolidate and amend the law relating to factories and the condition and remuneration of industrial employment.

Part I. makes the Act apply to a defined metropolitan area, and empowers the Governor, upon resolution of both Houses of Parliament, to extend its application wholly or in part to other areas of the State.

Part II. provides the administration machinery for the appointment of officers (Div. I.), the registration of factories (Div. II.), the registration of outside workers (Div. III.), and the keeping of records and giving of notices by the occupiers of factories (Div. IV.).

Part III. defines the powers and duties of factory inspectors, and requires the chief inspector to make an annual report of a general and comprehensive character for the purpose of informing Parliament of the course and conditions of trade. Particular employers or factories are not to be referred to in the report in such a way as to admit of ready identification, but the report is to show the numbers working in factories, classified according to sex, age, and average earnings in wages and by piece-work, hours of labour, proportion of work done within factories and outside, and such other particulars as the Minister may require.

Part IV. relates to sanitation in factories in respect to ventilation and overcrowding (Div. I.); structural safety, healthiness, latrine accommodation, fire exits and fire prevention and extinction appliances (Div. II.); prohibiting factories from being used as sleeping-places

(Div. III.); interior limewashing (Div. IV.); compliance with Board of Health requirements (Div. V.); and intervals for and the taking of meals by employees (Div. VI.).

Part V. makes special provision for bakehouses (Div. I.), dust-generating factories (Div. II.), and wet spinning-rooms (Div. III.).

Part VI. regulates the use of machinery in factories as to safeguards to be maintained (Div. I.), the placing and fixing of grindstones (Div. II.), the working of machinery by young persons and females (Div. III.), and notice of accidents and reports thereon (Div. IV.).

Part VII. contains restrictions regarding employees in factories, as to ages and working hours (Div. I.), working hours of employers or employees in any factory where any Chinese person is employed (Div. II.), medical certification of fitness for employment of persons under sixteen years of age (Div. III.), and the employment of boys and females as type-setters (Div. IV.).

Part VIII. provides for the appointment by the Governor of Wages Boards for certain specified callings (Div. I.), records of employees to be kept by employers (Div. II.), the appointment of one-half the members of a Wages Boards as representatives of employers, and of one-half as representatives of employees upon the nomination of the Minister after notice, unless one-fifth of the constituency object, in which case there is to be an election (Div. III.); the number of members to be not less than four or more than ten in addition to the chairman, to be appointed on their nomination (Div. IV.); the objects and duties of Boards as to the classification of employees, determination of rates of wages and payment for piece-work having regard to the average rates paid by reputable employers and the maximum of working hours per week (Div. V.); or may allow the employer to fix piece-work rates based on the earnings of an average worker at the wages rate fixed by the Board (Div. VI.); the licensing of aged, slow, and infirm workers, to be employed in restricted numbers at lower specified wages (Div. VII.); the duration, publication, and application of determination of Wages Boards (Div. VIII.); the suspension of such determination (Div. IX.); the powers and duties of inspectors (Div. X.); the prohibition of (1) any wage less than four shillings a week; (2) the taking of premiums or bonuses in respect of female apprentices or improvers; and (3) the giving pecuniary guarantees for the behaviour of apprentices or improvers (Div. XI.).

An appeal from the determination of a Wages Board is given to a Court of Industrial Appeals constituted of a Judge of the Supreme Court (s. 125), to be assisted by two assessors (s. 127). Within the metropolitan area the appeal may be instituted by a majority of the representatives of employers, or of employees on the Board, or by



not less than one-quarter of the employees affected, or by employers employing not less than that proportion (s. 128).

The Minister may refer any determination of a Wages Board for the consideration of the Court (s. 129). Solicitors or agents are not to be heard except by the direction of the Court, or by consent of the parties (s. 132); trade secrets are not to be disclosed (s. 133), (Div. XIII.).

Part IX. provides for the making of regulations subject to a veto by resolution of either House of Parliament, and subject to being quashed by the Supreme Court if invalid.

Part X. prescribes the legal procedure to try the title of members of Wages Boards, and validity of Wages Boards Determinations (Div. I.), evidence provisions under which the onus is largely thrown upon the defendant (Div. II.) and as to summary proceedings and penalties (*inter alia*) for injuries received in consequence of neglect of an occupier of a factory (s. 154), for lock-outs (s. 158), and for strikes (s. 159), (Div. III.).

*Scaffolding Inspection.*—Act No. 935, which is to take effect only within a defined metropolitan area (s. 2), empowers the Governor to appoint persons of at least four years' experience inspector or assistant inspectors (s. 4), requires persons about to erect scaffolding exceeding sixteen feet in height to give twenty-four hours' written notice to an inspector (s. 5); provides that scaffolding and gear must comply with regulations (s. 6); empowers the inspector, subject to an appeal to the Minister, to give such directions as he deems necessary to prevent accidents or to ensure compliance with the regulations, and renders the person refusing or failing to comply liable to a penalty not exceeding £50 (s. 7). Regulations are set out in the Schedule to the Act, but may be rescinded, amended, or added to by the Governor (s. 9).

**Public Health: Adulteration.**—Act No. 930 (the Adulteration of Wine and Brandy Act) provides that the Governor may prescribe what substances may be added before, during, or after the making of wine or brandy, and the quantities and manner of adding (s. 4), and prohibits the manufacture or sale of any wine or brandy to which any other than prescribed substances have been added (s. 3).

Bottled liquid shall not be exposed for sale as wine unless each bottle is distinctly labelled with the name and address of the bottler (s. 7), and if carbonated the word "carbonated" must appear in letters as large and distinct as any other letter on the label (s. 8). The Government Analyst, or a person authorised by him, may enter and inspect premises, and require the sale to him at reasonable prices of samples for analysis (s. 9). The certificate of the result of the analysis shall be forwarded to the Minister (s. 10) and is made *primâ facie*

evidence of the facts therein stated (s. 11). No beverage, unless made from grapes, shall be offered for sale under the designation of wine unless the word "Wine" be preceded in letters at least as large by the name of the other fruit or article from which it is made (s. 12). Offences against the Act render liable to a penalty not exceeding £50 (s. 13).

*Vaccination Exemption.*—Act No 919 (a) extended until December 31, 1907, the time during which conscientious objections might be taken in respect of the vaccination of any child born before the passing of the Act. It was passed in consequence of the public feeling evoked by an attempt suddenly to enforce, after a period of lax administration, the pre-existing provisions for compulsory vaccination.

*Savings Bank.*—Act 925 amends the Act of 1903 (b), precludes the trustees from investing the funds of the bank in the securities of or guaranteed by any other States in the Commonwealth, unless a higher rate of interest or greater advantages can be thereby obtained than by investment in the securities of or guaranteed by South Australia (s. 3); power is given to establish branches throughout the State for the receipt and repayment of deposits (s. 4); to establish a "Penny Bank" department (s. 8); and to enter into any arrangements with any savings bank authority either within the British Empire or elsewhere for the transfer of deposits from or to other savings banks (s. 11).

## 4. TASMANIA.

1898 (a) Acts passed—Public, 69; Private, 2.

*Defacement of Property.*—No. 5 prohibits all painting or delineation upon any rock, tree, or other thing in a public place, the property of the Crown or of a municipality, and the display of printed or pictorial matter, or any advertisement or sign upon private property, without the consent of the owner or occupier (s. 2); gives power to the Governor in Council to proclaim (subject to certain reservations) any tract of land a pleasure resort, or any road a tourist road (s. 5); and makes it an offence in any such resort or road to mark any rock or tree, or to disfigure any grass or shrubs (s. 6).

(a) See *supra*, p. 48.

(b) See *supra*, p. 34.

(a) Contributed by John W. Fearnside, Esq.

**State Advances on Land.**—No. 8 is an Act of some importance, whereby the State is empowered to lend money to cultivators of the soil upon the security of their land upon easy terms. The Act is to be administered by Commissioners, not exceeding three, nominated by the Governor in Council (s. 4). The Commissioners may issue mortgage bonds to the amount of £100,000, interest not to exceed 3 per cent. per annum (s. 12). Principal and interest are guaranteed by the Government (s. 13); and the bonds are made redeemable in a certain manner (s. 17).

The amount of any advance shall not exceed three-fifths of the actual value of freehold land at the time of the advance, nor shall any greater total sum than £500 be advanced to any one person (s. 21). Repayment of advances by borrowers, and formation of a reserve fund to meet any losses, are provided for (ss. 23, 26).

**Vaccination.**—No. 9 begins by repealing the Vaccination Act, 1882.

Every medical man, if willing to serve, is appointed a public vaccinator (s. 4); is paid for his services by Government (s. 6); and must give certificate of vaccination (s. 15).

Every parent is required to cause his child to be vaccinated within twelve months of birth, with penalty upon neglect; but he is exempt from such penalty if he make a statutory declaration that he conscientiously believes that vaccination will be permanently detrimental to the health of his child, such declaration to be also forwarded by him to the registrar of births of his district (s. 8).

Every vaccination certificate or statutory declaration must be entered in the register of births by the registrar (s. 17).

**Merchant Ships' Officers' Examination.**—No. 19 is passed agreeably to and in accordance with the Merchant Shipping Act, 1894 (Imperial Parliament), (*b*) so far as that relates to examinations of this character. The Act does not become operative until it has been approved by an Order in Council by her Majesty. (*c*)

**First Offenders' Probation.**—No. 20 gives authority to the Court to suspend the execution of any sentence upon a first offender, he, meanwhile, entering into recognisances, with or without sureties, to be of good behaviour for the term of the sentence, or, if that be a term less than twelve months, then for twelve months.

**Assessment of Real Property.**—No. 33 deals with the method of assessing the value of real property for taxation purposes; is a consolidating and amending Act of sixty sections, but seems to present no features of general interest.

(*b*) 57 & 58 Vict. c. 60.

(*c*) See "Statutory Rules and Orders Revised," 1904, viii. "Merchant Shipping," p. 50.



**Trustees.**—No. 34, (*d*) like the foregoing, is a consolidating and amending Act, containing sixty-five sections, and defines with fulness the rights, powers, and liabilities incidental to the office of a trustee.

The list of authorised investments (s. 5) is a wide one. The powers of a company authorised by law to act as a trustee are extended by providing that, where appointed, a company is to be deemed for all purposes a trusteeship of more than one trustee, unless the instrument creating the trust expressly prohibit (s. 29). Trustees may, with the sanction of the Court, raise money by mortgage upon the trust property for its preservation or improvement, notwithstanding any directions contained in the instrument under which the trust arises (s. 60). Remuneration of a trustee is allowed (s. 58), where not enjoined in the instrument under which he acts.

**Education** (No. 37).—The exemptions granted to parents from the compulsory daily attendance of their children at school are liberal (s. 21). Payment of fees is to be enforced by distress only (s. 5).

**Police Regulation** (No. 48).—A consolidating and amending Act, it embraces the appointment, powers, duties, and discipline of all police constables, whether ordinary or special, and the superannuation of the former.

1899 (*e*)                      Acts passed—Public, 49; Private, 6.

**Australasian Federation.**—No. 1 is the Australasian Federation Enabling Act (Tasmania), and contains the amendments to the original Act of 1898 agreed upon at the Conference of Australasian Prime Ministers held in Melbourne in January and February, 1899.

**Lotteries.**—No. 2 renders illegal the use of totalisators (*f*) except at races, where a licence to the stewards issued by the Commissioner of Police is required. No one in charge of any such machine is to receive money from any person under sixteen years.

(*d*) See *infra*, p. 80.

(*e*) Contributed by J. W. Fearnside, Esq.

(*f*) The totalisator is a system of betting very popular in Australia and other Colonies and also on the Continent under the name of the *Pari-Mutuel*. "Rows of offices," to quote the "Encyclopædia Britannica," "are established behind or near the stands, on each of which lists are exhibited containing the numbers of the horses that are to run in the coming race. At some of these the minimum wager is 5 francs, at others 10, 20, 50, 100, 500 and in some cases 1000. The person who proposes to bet goes to the clerk at one of these offices, mentions the number, as indicated on the card, of the horse he wishes to back, and states whether he desires to bet on it for a win or for a place only. He receives a voucher for his money. After the race the whole amount collected at the various offices is put together and divided, and the prices to be paid to winners are exhibited on boards. These prices are calculated on a unit of 18 francs. Thus if the winner is notified as bringing in 25, the meaning is that the backer receives his original stake of 10 francs and 15 in addition—the money being paid immediately by another clerk attached to the office at which the bet was made."

**Offences against the Person (No. 5).**—Certain omissions in the Criminal Law of the Colony with respect to acts done with intent to murder and unnatural offences are hereby repaired.

**Church of England in Tasmania.**—No. 6 amends the Church of England Constitution Acts. It gives power to the Synod to alter the constitution of the Church in any way it thinks fit, so that it be not contrary to the doctrine of the Church, and to delegate powers to the Diocesan Council, and it creates the trustees a body corporate.

**Elections.**—No. 7 continues and amends the Electoral Act, 1896. It provides for the keeping of electoral rolls by the returning officer of each electoral district, and for revision of the same at least four times a year (quarterly) in each district before a revision court consisting of at least two justices of the peace resident within such district.

**Tasmanian Contingent for South Africa.**—No. 11 is concerned with the payment and maintenance of this force, and makes an appropriation therefor.

**Bankruptcy (No. 12).**—Certain slight alterations in the law of bankruptcy are made by this Act, among them provisions—analogous to those of the English Act, 1888 (*g*)—for preferential payment of the salary and wages of clerks, servants, and workmen up to a certain amount.

**Jury Act.**—No. 32 is a lengthy consolidating and amending Act. The qualifications of jurors and exemptions are set forth (ss. 4, 5, and 7); superintendents of police charged with duty of preparing jury lists (ss. 10, 11); sheriff is to examine lists so prepared and make corrections (s. 11); justices of the peace to hold special sessions for finally making up the lists, which are then to be transmitted to the sheriffs (s. 17). The judges of the Supreme Court select from this list the special jury list (s. 20).

Some ten sections are occupied with the formalities to be observed in summoning the jury, and it is interesting to note that provision has been made (s. 33) for the swearing of the jury at the opening of the Court, whereupon no further swearing upon any subsequent trial or inquiry is needed, unless the parties require it. All civil issues are triable by a jury of seven (s. 38), criminal by a jury of twelve (s. 39). Compensation and travelling allowances are provided for all jurors (ss. 61–94).

**Firm Registration (No. 34).**—This deals with certain firm names, viz. :—

- (i.) Where the business is not carried on under the full names of all the partners;
- (ii.) Where the name consists of any name or addition other than that of the person who carries on the business;

- (iii.) Where the name is used only for the purpose of carrying on the business, in which cases the firm name must be registered, together with the nature of the business carried on, and the names of all the persons who actually are engaged in carrying it on.

The registered name must always be used in matters connected with the business. On change of firm name, the new name must be registered as if it were a new firm. Penalties are prescribed for making default in registration, and any one knowingly making a false return is guilty of a misdemeanour.

**Protection of Persons acting in the Execution of Statutory and other Public Duties.**—No. 36 enacts that no proceeding shall be instituted against any such person for neglect or default in the execution of his duty unless it be commenced within six months after such neglect or default.

1900 (*h*)

Acts passed—75.

**Imprints.**—No. 1 requires that every person possessed of a printing press shall give notice of the fact to the Chief Secretary of the Colony. The printer's name must appear upon every published work, and he must keep a record of the names of those who employ him; no person is allowed to distribute unauthenticated printed matter. Newspapers are exempt from the last three provisions, and there are general exemptions in respect of bank notes, bills of exchange, bills of lading, and similar documents.

**Demise of the Crown** (No. 2).—A Parliament shall not be determined, nor shall any appointment made by the Governor be vacated, nor any civil or criminal proceeding or any contract made with or on behalf of the Crown be in any way affected, by the death of the Sovereign.

**Constitution Amendment Act.**—No. 5 enacts that no member of either House of the Parliament of the Australian Commonwealth shall be capable of sitting as a member of either House of the Tasmanian Parliament.

**Married Women's Property** (No. 7).—An amending Act. Every contract entered into by a married woman on her own behalf shall be deemed to bind her separate property, whether she is or is not possessed of any at the time of making the contract, provided that she be not restrained from anticipating. A married woman may be ordered to pay costs out of property which is subject to a restraint, upon anticipation such payment being enforced, if need be, by the



appointment of a receiver and (or) sale of the property. A husband shall not be liable for any tort committed by his wife.

**Interpretation of Acts of Parliament.**—No. 8 consists of rules for the construction of Acts of Parliament of the Colonial Legislature which will tend to make the language used more concise.

**Explosives (No. 15).**—An amending and consolidating Act, which concerns itself minutely with the importation, carriage, and storage of explosive substances, including those used for blasting purposes.

**Crown Lands.**—No. 21 (*i*) facilitates the sale of Crown lands. No person is entitled to purchase upon credit more than three hundred and twenty acres at any one time.

**Defence.**—No. 23 places the limit of the active force of the Colony at three thousand men in time of peace. It also gives power to the Governor to sanction the organisation of rifle associations and of associations for the purposes of drill, and to disband any of the same if he considers it necessary; he may also sanction the provision of arms and clothing (or a money allowance in lieu of clothing) for such clubs or associations. The form of the oath of allegiance is also altered.

**Opossum (No. 25).**—All hunting of this animal is absolutely forbidden for two years. (*k*)

**Suppression of Smoking by Juveniles.**—No. 27 (*l*) visits with penalties any person under thirteen years who smokes tobacco in any form in a public place and any tobacconist who supplies such a person with tobacco.

**Automobiles.**—No. 35 has for its object the conditions under which light locomotives may be used, one of which fixes the maximum speed allowed on a public highway at fourteen miles an hour.

**Tasmanian Contingent for South Africa.**—No. 35 makes a supplementary appropriation for the payment and maintenance of this force.

**Mines and Mining (No. 61).**—A long and important consolidation of the mining law of the Colony, containing two hundred and eleven sections. The chief of these are—Ss. 14–19, which deal with prospectors' licences and the privileges conferred thereby. Ss. 20–48.—Leases for mining purposes, and the conditions under which they are granted, and the circumstances in which they may be forfeited. Ss. 49–57.—Water rights.

Ss. 58–79.—Mining operations, including the right of a holder of a mining lease to acquire an area of thirty acres from an adjoining owner as a tailings area, also rules defining the limits of the right of support from adjoining lands.

(*i*) Repealed by No. 39 of 1903, see *infra*, pp. 71, 72.

(*k*) Continued by No. 21 of 1902, *infra*, p. 68.

(*l*) Repealed by No. 4 of 1907, *infra*, p. 80.

Ss. 81-106.—Regulations for working mines with a view to the safety, health, and comfort of the miners; powers and duties of mine inspectors; no person to be employed for more than eight hours at any one time; regulations for ventilation, blasting, fencing of shafts and machinery, protection of persons ascending and descending shafts; employer to compensate employee injured through non-observance of the Act.

Ss. 107-115.—Drainage and pumping. Ss. 116-119.—Crown land or water-courses may be proclaimed for place of deposit for tailings, and in the latter case machinery is provided for compensating the riparian owners.

Ss. 120, 121.—Where a mineral lease exists, the lessee or a stranger may prospect the land for gold, subject, in the case of a stranger, to the proviso that the mineral lessee be not interfered with in his mineral working.

Ss. 126-130.—Lessee's rights to reserve part of leased land for (1) growing timber, and (2) for mining purposes. Ss. 131-141 create a Mining Board and invests it with certain powers and duties. Ss. 142-174.—Administration of justice in matters falling under the Act.

Ss. 175-181.—Arbitrations arising under the Act and the procedure incident thereto. S. 190.—Minerals unlawfully removed from Crown lands may be seized and confiscated.

**Civil Service** (No. 69).—A comprehensive Act concerned with the classification, pay, promotion and establishment of a provident fund for officers of the Civil Service. The working of the Act is entrusted to a board of five members elected by the officers of the Civil Service. Every officer, with certain exceptions, must subscribe to the provident fund.

**Bills of Sale** (No. 70).—Like No. 61, an important amending and consolidating Act, in which the following are the chief points:—S. 5.—Unregistered bill void. S. 7.—Where bill is made subject to a condition not contained therein, such condition must be written upon the bill before it is registered, otherwise the bill is void.

S. 9.—Notice of intention to give a bill must be lodged with registrar fifteen days before registration. S. 11.—A creditor of the intending grantor may enter a caveat against registration. Ss. 12-17.—Caveat to be notified to grantor, who may issue a summons against the caveator, and the proceedings and procedure thereafter.

S. 18.—A bill given by way of security for the repayment of money to be renewed every two years, otherwise it becomes void. Ss. 23, 24.—Registrar to keep books (1) containing names of persons giving notice of intention to make a bill, (2) and of those who have registered bills.

S. 28.—Search of the two last-mentioned books to be allowed.  
 Ss. 29, 30.—Satisfaction of the whole or part of a bill to be registered.  
 S. 40.—Certain covenants to be implied in every bill of sale. S. 41.  
 —Certain additional covenants to be implied in every bill of sale given by way of security.

1901 (*m*)

Acts passed—60; Private, 2.

**Presbyterian Church of Australia Act.**—No. 2 has for object the constituting of one Presbyterian Church for the whole of Australia, in place of the five which have hitherto existed, and is interesting as showing the consolidating effect produced by the Commonwealth Act upon a religious body.

A basis of union, and articles of agreement, appear as a schedule to the Act, and are very full and precise. The former deals with doctrine, the latter with government which is to be by a Supreme Court of the Church, to be called the General Assembly of the Presbyterian Church of Australia. One uniform system of theological training and one standard of qualification for the Ministry are prescribed.

**Investment in Government Securities Act.**—No. 4 is passed agreeably to the provisions of the Colonial Stock Act, 1900 (Imperial Parliament), (*n*) and is to facilitate the investment of British trust funds in Tasmanian Government securities. S. 5, by which it is stated that any Act of the Tasmanian Parliament which in the opinion of the Imperial Government injuriously affects the rights or remedies of the holders of Tasmanian Government securities, or alters the terms of the contract under which such securities were created or issued may properly be disallowed by his Majesty, is rather curious from the standpoint of constitutional law. It emphasises the desire of the Colony to maintain its financial credit by having and continuing to have its debt included in investments authorised for employment of British trust funds. A similarly worded proviso appeared in a New Zealand Act of the previous year. (*o*)

**State Savings Bank.**—No. 9 provides for the continuance of the Post Office Savings Bank of the Colony of Tasmania as a Savings Bank of the State of Tasmania, this being rendered necessary because the Government of the Australian Commonwealth has assumed the control of the Post Office in Tasmania under the Commonwealth Act.

**Railways Clauses Consolidation Act.**—No. 14 is a consolidating Act of one hundred sections. It is divided into twelve parts, and provides for railway construction, maintenance, and working; for the acquisition

(*m*) Contributed by J. W. Fearnside, Esq.

(*n*) See *supra*, vol. i. p. 56.

(*o*) See *infra*, p. 231.



of land and materials; for compensation to persons whose interests are affected by the exercise of powers conferred by the Act; for levy of rates and tolls; for purchase by the State, and for forfeiture to the State. This forfeiture may take place if the promoters have failed for one month to work the traffic on the railway, pursuant to regulations duly made; are insolvent or neglect to meet their lawful obligations to servants employed upon the railways, or to any creditor; have failed to render the railway safe for traffic within a reasonable time after traffic has been interdicted as unsafe; or are guilty of any breach of the provisions of the Act without reasonable cause, after reasonable notice has been given to put an end to such breach.

All members of Parliament of Tasmania are entitled to travel free over any railway in the State.

**Audit Act.**—No. 15 is to consolidate and amend the law relating to the audit of the public and other accounts.

It provides for the appointment of a public auditor, who shall hold office during good behaviour, and shall not be removed save upon an Address of both Houses of the State Parliament.

It prescribes the duties of the auditor and his relations with the State Treasurer.

The printed estimates of revenue transmitted to Parliament, and estimates of expenditure, as passed by the Parliament in each year, are to form the basis of the system of account. General Regulations are appended to the Act in the form of a Schedule for the preparation, keeping and rendering of the public accounts.

**Recovery of Possession of Tenements (No. 20).**—A tenant of any premises for any term not exceeding seven years at a yearly rent not exceeding £40, who holds over after his tenancy has been duly terminated, may be summoned before justices, who may order possession to be given up by the tenant to the landlord, and may issue a warrant addressed to all constables in the State commanding them to enter into the premises and give possession to the landlord, or his agent.

**Exported Products Act.**—No. 21 imposes regulations for certain products exported from the State, and for this purpose empowers the Governor to appoint inspectors whose duty it is to see that all such products are properly branded. An inspector has power to forbid export of any product. The consignor may obtain a certificate from an inspector that a product to be exported is of good quality and free from disease.

**Contagious Diseases (Cattle) (No. 22).**—An Amending Act which provides for the separation of diseased animals; for declaration of a place as infected; for the slaughter of diseased animals; and for compensation to be paid to the owner in the latter case.

To provide a fund for the purpose of compensation, a sum not exceeding threepence a head shall be paid for all cattle above six months old, but an owner of less than four head is exempt.

**Acquisition of Land for Settlement.**—No. 23 creates a Board of Land Purchase Commissioners, who, together with the responsible Minister of the Crown for the time being administering the Act, are the machinery for working it. The land to be acquired is private land not within the boundaries of any town.

The land acquired is to be disposed of under perpetual lease, save as regards such portions as may be necessary for public purposes, and certain cases where land may be sold in fee simple for dairy factories. Provisions regulating the leasing are very full, and include allotments for workers' homes.

**Police.**—No. 42, among other things, prohibits persons under thirteen years of age from being in possession of firearms.

**Electoral Act.**—No. 57 (*p*) consolidates and amends the law regulating the election of members of Parliament of Tasmania. It divides the State into electoral districts; empowers the Governor to appoint polling places, a chief electoral officer and returning officers; provides for the preparation and revision of electoral rolls; sets out the mode of conducting elections, among which provision is made enabling a voter who is absent more than five miles from the place where he ought to vote on the polling day, to vote by post; it confines election expenses of candidates to certain stated matters, and with regard to them to a maximum of £50 for each candidate (other than personal expenses); deals with bribery and corruption, also setting out a list of electoral offences with the appropriate fines and punishments; settles the procedure in the case of disputed elections, and their mode of trial.

## 1902 (*q*)

Acts passed—56; Private, 2.

**Legal Practitioners (No. 10).**—Any person who is a barrister or solicitor of any other State of the Commonwealth of Australia may be admitted to practise in Tasmania, subject to certain conditions enumerated in the Act, one of which is that it shall apply only when a similar Act has been passed by a sister State to barristers or solicitors of the State, and shall be in force only so long as such similar Act shall remain unrepealed.

**Inspection of Machinery Act.**—No. 11 is a consolidating and amending Act, which deals with machinery generally, and has special provisions concerning steam-boilers. The appointment of a chief

(*p*) Repealed by No. 6 of 1907, *infra*, p. 81.

(*q*) Contributed by J. W. Fearnside, Esq.

inspector and one or more assistant inspectors of machinery is prescribed, who are to keep full records of all their proceedings under this Act, and to report them to the Chief Secretary of the State.

Persons owing machinery of not less than one horse-power are to give notice thereof to an inspector.

Persons under fourteen years are not to be employed about any machinery, nor in certain cases are persons under twenty-one years. No persons are to work among any self-acting machinery in motion.

Certificates of competency to manage machinery are to be granted by the chief inspector to every person who has satisfied him upon examination of his competency.

Certificates of competency may be withdrawn from an engineer or engine-driver by the chief inspector, and an appeal is given from his decision to a Court of Enquiry composed of a police magistrate and two technical assessors.

Wide powers of controlling the use of machinery are given to the inspectors, including the fencing of dangerous machinery. It is the duty of the Chief Secretary to provide the inspectors with proper standards for testing steam-boilers. Upon his first inspection of any boiler the inspector shall make and keep a record of all particulars of such boiler, and upon subsequent inspections he shall record any alterations which have taken place in such particulars since the last previous inspection. Once in each year the chief inspector shall furnish to the Chief Secretary a return of all boilers suspected during that year.

If to any inspector it appear that any boiler is unsafe, he may require the owner to cease to use it, wholly or partially.

The owner of any machinery or boiler is entitled to a certificate that it has been inspected.

Notice of any accident where loss of life or bodily injury has been caused must be sent to the inspector by the owner of the machinery or boiler affected.

The justices imposing any penalty under the Act may allow a certain proportion to any person bodily injured by reason of the default giving rise to the penalty.

The Act does not apply to engines, boilers, or machinery on railways under the State control.

**Methodist Church of Australasia.**—No. 18 is an Act to confirm the union in Tasmania of the Wesleyan Methodist Church, the Primitive Methodist Church, and the United Methodist Free Churches, to deal with their property in Tasmania and to regulate the trusts thereof, and to vest that property in the United Church, the Methodist Church of Australasia.



**Opossum.**—No. 21, (r) among other provisions, forbids the hunting of the opossum for two years.

**Income Tax Act.**—No. 29 (s) is an Act authorising the assessment and taxation of income in the State. For the purpose of administration the Governor may appoint a Commissioner, District Commissioners, and other officers deemed necessary, each of whom shall take an oath of secrecy.

The income of every company carrying on business in the State, and the income of every person which arises or is received in or derived from the State, are liable to taxation. Every mining company incorporated outside the State, and which carries on its operations within the State is to be deemed to have its chief place of business in the State. Certain incomes are exempt from taxation under the Act, among which are the revenues of municipalities and local bodies receiving revenue for the purpose of local self-government, income arising from stock issued by the State but redeemable elsewhere, and the incomes of private persons (not companies) not exceeding from all sources £100 per annum.

The rates of taxation are: for companies, one shilling in the pound; for private persons, one shilling in the pound on incomes derived from property; sixpence in the pound on incomes derived from business.

Companies must not distribute their dividends before paying the tax. There are elaborate provisions for the ascertainment of the amount subject to tax, being principally concerned with companies whose chief place of business is not in the State, and with the incomes of persons temporarily or permanently residing outside it.

There are deductions allowed in the case of incomes of persons which are above £100 and do not exceed £400 a year. In calculating the actual income basis, deductions of various kinds are recognised—*e.g.* rent of land or buildings used solely for trade purposes, sums expended for the supply or repair of apparatus used solely for business purposes.

The tax is to be deemed to be a debt due to the Crown. Every company liable to taxation under this Act shall be represented by a person resident in Tasmania, and stringent rules are laid down for the appointment of this officer, who is made responsible for the correct return of his company. Full provision is made by the Act for assessment. An objection by any private person or company to an assessment is considered by the Commissioner, and if not allowed by him goes for review before a judge of the Supreme Court.

**Licensing Act.**—No. 32, a consolidation and emendation of the law upon this subject, is of interest as including a scheme of local option among its provisions.

Licensing Benches are authorised for districts of which Hobart and

(r) See *supra*, p. 62, and repealing Act No. 53 of 1907, *infra*, p. 83.

(s) See *infra*, p. 75.

Launceston are the respective centres, composed in the former case of nine members, in the latter of seven. Of these, seven and five members respectively are justices to be elected by the General Sessions Court of each district, the two remaining members in each case being the mayor and police magistrate.

The Governor has power to proclaim other licensing districts, each composed of five members, one nominated by the Governor, the others elected as in the two districts created under the Act.

Every Licensing Bench is given the powers of a Court of General Sessions as to compelling the attendance and examination of witnesses and the punishment of contempts. No hotel or public-house licence can be granted unless certain conditions as to number of rooms and space are complied with, nor unless the Bench are satisfied that the sanitary condition of the house is satisfactory and that the fire appliances are adequate. No married woman can hold any kind of licence save in a few excepted cases.

The ratepayers of a district residing within a certain distance of a proper licensed house may object to the granting of such a licence by presenting a petition to the Bench. If the objection is against a house which has not been licensed during the preceding year, and in respect of which the application is for a provisional licence, then the Bench must refuse the licence; but if the house has been licensed during the preceding year, then the Bench must inquire into the truth of the allegations in the petition and decide upon the opinion they form in the result. Ratepayers may appear in support of the petition, and there is machinery provided for taking a poll. The Bench is given full power to award costs of proceedings.

An appeal lies from a Licensing Bench to the Supreme Court. Clubs are to be registered, and the supply of liquor to drunkards is forbidden.

A penalty is prescribed for any holder of an hotel licence or of a public-house licence in the country who has refused, without good cause, to receive and provide for a traveller. There are penalties also for selling unwholesome liquor.

**Baptist Union of Tasmania.**—No. 48 deals with the property of this religious body, and power is taken to federate with Baptist Unions in the other States.

## 1903(*t*)

Acts passed—45; Private, 1.

The number of Acts passed during the session of 1903 was forty-six, of which twenty-seven were public general Acts. The only Act calling

(*t*) Contributed by J. W. Fearnside, Esq.

for special comment is that by which the franchise has been extended to women.

**Bank Holidays** (No. 4).—Nine days in the year are constituted bank holidays, including the birthday of the Sovereign and the Prince of Wales. Power is given to the Governor to appoint a special bank holiday from time to time as he may think fit.

**Constitution: Female Franchise.**—No. 17 extends the right of voting for the Legislative Council and for the House of Assembly to women, but does not make them eligible for election as members of either body.

**Dentists** (No. 18).—A Board of Examiners is created for conducting examinations and granting certificates and licences, and consists of three medical practitioners and three dentists. The original and subsequent appointments to the Board are made by the Governor upon the written recommendation of the Court of Medical Examiners. A dentists' register is to be kept, containing the names of all persons registered under this Act. Unregistered persons (other than legally qualified medical practitioners) are not to use the title "dentist," nor may they receive fees, under a maximum penalty of £50.

Any person registered, or entitled to be registered, in the United Kingdom as a dentist or medical practitioner is, equally with those who have received certificates and licences from the Board of Examiners, qualified for registration under this Act.

**Legal Procedure** (No. 19).—By this Act, in every civil cause or matter commenced in the Supreme Court under the provisions of the Common Law Procedure Act of 1855, and every amendment thereof, or under the Local Courts Act, 1896, law and equity are to be administered by the Court concurrently, and where there is any conflict between the rules of equity and the rules of common law with reference to the same matter, the rules of equity are to prevail.

**Police.**—No. 24 prescribes the accommodation requisite for each inmate of a common lodging house and for each person admitted to a place of public entertainment.

**Public Health** (No. 37).—This is a consolidating Act containing one hundred and eighty-six sections, and is divided into nineteen parts.

A Department of Public Health is constituted, with a Minister at its head. A Chief Health Officer, assistant health officers, and inspectors may be appointed by the Governor. Local medical officers of health are to be provided, also local inspectors.

Minute and careful regulations are laid down for the prevention of infectious diseases, very wide powers being given to the Chief Health Officer for this purpose. If it become necessary to destroy any building,



animal, or thing, the owner may be compensated. The Chief Health Officer or a local officer of health may order a school to be closed.

Hospitals may be provided by a local authority, and must be where the Chief Health Officer so requires. Recovery of cost of treatment and maintenance in hospital is made a debt due from the patient (if he be not a pauper) to the local authority, and may be recovered accordingly.

Mortuaries and morgues are to be provided by the local authority. Houses are to have efficient drains and cesspools, and cleansing and scavenging are made obligatory. Pollution of watercourses is inhibited.

Borrowing powers for carrying out sanitary works are conferred on local authorities, subject to certain conditions.

A considerable portion of the Act is concerned with nuisances and the carrying on of offensive trades.

A local authority may, and if recommended by the Chief Health Officer must, make bylaws under this Act, which must be confirmed by that officer, and, previous to such confirmation, must have been certified by the Attorney or Solicitor-General of the State not to be repugnant to any law of the State or to the provisions of this Act, and must also be laid before Parliament.

Adulteration of articles of food or drugs is prohibited, and to effect this public analysts are to be appointed.

For infant life protection it is enacted that no person shall receive into his house for hire more than one infant under two years for the purpose of nursing apart from the parents for more than twenty-four hours except in a house registered under this Act. The register is to be kept by the local authority. An inquest must be held relative to the cause of death of any infant in such registered house unless a certificate be produced to a coroner under the hand of a medical practitioner specifying cause of death. No such infant shall be buried without the production of a certificate under the hand of the coroner authorising such burial.

Dwelling-houses may be declared unfit for habitation, and the occupation forbidden. Occupation of cellar dwellings or underground rooms is made illegal.

A local authority may make bylaws with regard to the construction of new streets, new buildings, drainage, and cesspools. A local authority and its officers are to be protected for anything done by it or them in executing this Act.

**Crown Lands** (No. 39). (*u*)—This is an Act of two hundred sections divided into fifteen parts, consolidating the law on this subject. The Commissioner of Lands and Works is the Commissioner of Crown Lands. A Surveyor-General and a Conservator of Forests may be appointed by the Governor, and bailiffs of Crown lands by the Commissioner.

(*u*) See *supra*, p. 62.

The Governor may except from sale and reserve land for the growth of timber, and for public purposes, such as public roads and places of public recreation, but no land may be so reserved as a site for a place of public worship or for any other religious purpose.

Persons who have already purchased land and have not complied with certain conditions incidental to such purchase are not eligible to select under this Act.

No person under the age of eighteen years can purchase land, and purchasers between that age and twenty-one years are to be liable upon contracts for purchase and for any matter in relation thereto.

Certain lands may be sold by public auction, having been previously surveyed. Land is not to be so sold at less than the previously advertised upset price. Land not being within five miles of any city may be sold by private treaty upon certain conditions.

The Governor may declare any gold-field, portion of Crown land, a mining area, whereupon it is only subject to restricted rights of purchase, and the land so sold is open to be searched for gold or other metals or minerals by any person, the owner being allowed compensation for any damage which may be done to his land. Lands are divided into town lands, first-class agricultural, second-class agricultural, and third class agricultural land, for which the conditions of purchase upon credit vary, as do the conditions as to improvements which must be effected to the land before the purchaser upon credit is entitled to a deed of grant constituting him indefeasibly the owner. On failure in payment of any instalment land may be forfeited.

Sale of land in mining towns is provided for, half purchase-money of which may be expended on public works.

Leases not exceeding fourteen years may be granted by the Commissioner, with the consent of the Governor, for wharves, manufactories, railways, or tramways, and for grazing purposes. Licences for felling timber upon, removing gravel from, and hunting upon land may be granted by the Commissioner; also "occupation," "residence," and "business" licences for no more than twelve months may be issued by him.

Lands may be resumed by the Crown for mining upon payment of compensation. Penalties are prescribed for those who are in unlawful possession of Crown land, and a summary remedy is given for dispossessing such persons.

Machinery is provided whereby money can be raised for making roads and for making streets and other improvements in towns.

**1904** (x) Acts passed—35: Public, 28; Private or Local, 7.

**Hawkers** (No. 4).—Prohibits hawkers from selling or carrying about spirits, wine, beer, or other liquors, or selling to any person any goods, wares, or merchandise after sunset and before sunrise on peril of a penalty of £20.

**Lotteries** (No. 7).—This is a tax on betting as represented by the totalisator, out of the moneys retained by any committee or stewards of a racecourse by way of commission on any money placed in the totalisator: 1 per cent. of the total sum of any money placed in the totalisator is to be paid to the Treasurer of the State towards the Consolidated Revenue Fund, and the balance, after deducting the cost of working the totalisator, is to be appropriated solely for the purposes of promoting horse-racing on the racecourse on which such totalisator has been conducted or for maintaining and improving the racecourse.

**Duties on Estates of Deceased Persons** (No. 9).—This is an Act fixing the duties payable on the properties of deceased persons with the requisite machinery for working the Act. The duties are at the following rates: where the value of the property exceeds £500 and does not exceed £1000, 2 per cent.; exceeds £1000 and does not exceed £2000, 2½ per cent.; and so on up to £100,000, when 10 per cent. is payable. Executors and administrators are to file statements of assets and liabilities. Probate is not to be granted till duty paid.

Property forming part of a *donatio mortis causa* is taxable. A power is given the registrar to compromise duties.

**Stamp Duties** (No. 11).—This Act imposes a penalty on persons giving an unstamped receipt for an amount of £2 or upwards or for issuing a lottery ticket not duly stamped.

**State Teachers** (No. 13).—The object of this Act is the relief and maintenance of superannuated State teachers, and for this purpose a Board is incorporated and a fund created with the requisite machinery.

**Women Barristers** (No. 14).—Tasmania has by this Act recognised a woman's right to be admitted as a barrister, solicitor, proctor, or attorney, and to practise as such on the same terms as a man. But the Tasmanian woman barrister or solicitor does not thereby gain a right to claim admission as barrister or solicitor in any State or country where women are refused admission to the profession.

**Taxation** (No. 17).—This is entitled "An Act to levy a Tax upon Persons in proportion to their Means or Ability." It is a tax upon (i.) occupiers and sub-occupiers of property throughout Tasmania, and (ii.) upon lodgers not liable to be taxed as occupiers or sub-occupiers.



“Lodger” means any person of the age of twenty-one years or upwards who resides with any occupier or sub-occupier as paying lodger or as employee receiving board and lodging as part payment for his services or as a member of the family who earns and enjoys an income in his own right, but does not include female domestic servants. The tax is to be paid upon the “taxable amount,” which is, in the case of an occupier, the annual value of the property occupied; in the case of a lodger the annual value of board and lodging. The rate of the tax is graduated. Where the taxable amount is under £60, the amount to be paid is 2s. 6d.; where over £60 and under £100, 1d. in the pound; where over £150 and under £400, 4d. in the pound.

Persons paying income tax are exempted. The rest of the Act (ss. 16-68) is machinery for assessment and collection.

**Marine Boards (No. 18).**—To encourage the resort of vessels to the ports of Tasmania all vessels arriving and sailing in ballast or which do not break bulk are exempted from payment of all port charges, light-house dues, and all port dues whatever, except pilotage where required and received.

The Act contains also provisions as to distribution of wharfage rates and power for the Marine Boards to fix such rates from time to time. Each such wharfage rate upon goods landed or shipped at any proclaimed port in Tasmania from or to any port or place within the Commonwealth of Australia is to be uniform.

No person not a certified engineer is to have charge of the machinery used in any steamship trading within the limits of any port, harbour, or river within the jurisdiction of any Marine Board, unless he holds a certificate of competency or service granted by a Marine Board under the Act.

**Cruelty to Animals (No. 21).**—This is a consolidating and amending Act. “Animal” in it has a wide definition. It is to mean “mammal or bird, whether domestic or wild, and any other animal whatsoever if kept in confinement.”

“Cruelty” also has a large signification. It is to mean “any act causing unnecessary suffering to any animal,” and includes, among other things, flogging with unnecessary severity, or overworking any animal, using any animal when it cannot be used without causing it suffering which might be avoided, carrying any animal by land or water in such a manner as to cause it suffering which might be avoided, failing to supply any animal, under the care of the person charged with an offence against this Act with a sufficient quantity of food or water, or killing any animal in an unnecessarily painful manner, but does not include acts usually and reasonably done with respect to animals, such as—among other things—hunting wild animals, branding, ear-marking,

gelding, or spaying domestic animals, dishorning calves, or trapping or poisoning wild animals; provided that the person setting a trap which does not kill the animal removes the animal from the trap within a reasonable time, or using poison, uses a poison which will speedily destroy life if it be reasonably practicable to use such a poison. Any person who does or causes or procures any other person to do any act causing unnecessary suffering to any animal is to be deemed "guilty of cruelty" towards it. Any person who keeps or uses or acts in the management of any place for the purpose of fighting, baiting, or worrying any animal is to be liable to be punished in the same way as if he had been convicted of cruelty towards an animal.

Any constable may, upon his own view, or upon the information of any person giving his name and address, apprehend an offender against the Act, and take him before two or more justices of the peace, who may punish him in a summary way with a fine not exceeding £10 or imprisonment not exceeding one month. The offender where not the owner of the ill-treated animal may be ordered to pay, in addition to any fine, compensation not exceeding £20 to the owner.

A constable in apprehending an offender may detain the animal and vehicle, if there is one, as security. Diseased or injured animals may be destroyed.

Power is also reserved to the Governor to make regulations to prevent cruelty to animals while being landed from or taken on board any vessel or carried from one place to another.

**Income Tax (No. 22).**—This amends the Income Tax Act, 1902. (*y*) It eliminates the clause charging income tax at the rate of 6*d.* per pound of the income derived from business, leaving the 1*s.* tax on income derived from property. A company carrying on business in Tasmania which has borrowed money on debentures, mortgages, or otherwise out of Tasmania is to pay income tax on the whole amount of interest payable in respect of such borrowed money, deducting the amount from the interest. Local bodies are also required to pay income tax on money lent them on debentures or other security. There is an exemption in favour of any debenture forming part of the funds of any society registered under the Friendly Societies Act, 1888, or under the Trades Unions Act, 1889.

**Game (No. 25).** (*z*)—The Game Protection Act, 1895, is amended in a few particulars. The most important is that extending protection to the nest, eggs, or young of a long list of wild birds—including crakes, plovers, rails, herons, petrels, penguins, partridge, grouse, bittern—enumerated in a schedule.

(*y*) See *supra*, p. 68.

(*z*) Repealed by No. 53 of 1907, *infra*, p. 83.

**1905 (a)**

Acts passed—52; Private, 2.

**Legitimation (No. 3).**—Tasmania in this Act follows the example of the other Australian Colonies, and allows illegitimate children to be legitimated *per subsequens matrimonium*. The operation of the Act is retrospective; illegitimate children are to be deemed legitimated as from birth and for the purpose of succession to real, as well as to personal, property.

**Land Tax Consolidation (No. 4).**—This Act consolidates the law as to Land Tax.

**Women and Children Employment (No. 5).**—By this Act the employment in a factory of any person under the age of thirteen years is prohibited.

**Bills of Exchange Amendment (No. 7).**—S. 2 provides that branch banks are to be deemed separate institutions for certain purposes, and s. 3 enacts the same provision as to crossed cheques as is contained in the recent English Act. (b)

**Bodies Corporate (Joint Tenancy) (No. 8).**—This Act reproduces the provisions of the English Bodies Corporate (Joint Tenancy) Act, 1899. (c)

**Public Service (No. 9).**—The Public Service of Tasmania for the purpose of this Act comprises all persons employed in the public service of Tasmania, with certain specified exceptions, of which the most important are the judges of the Supreme Court.

The Act is divided into four parts. Part I. deals with administration and provides for the appointment, constitution, powers, etc., of a Public Service Board; under s. 14 the Board are to inspect all Government departments, and provision is made for securing that no department has any excess of officers.

Part II. deals with the divisions of the Public Service into professional, clerical, and general divisions. Under s. 25 only British subjects and persons who have passed the requisite examination are, as a general rule, eligible for appointment to the service.

Ss. 35–39 regulate the relations between the Public Service of the Commonwealth and the Public Service of the State of Tasmania.

Part III. provides for internal administration, and Part IV. contains miscellaneous provisions (*e.g.* as to forfeiture of office, leave of absence and holidays, prohibition of performance of work outside public service).

**Homing Pigeons (No. 21).**—This Act prohibits the destruction of homing pigeons under a penalty of £10, which is in addition to the liability to pay full damages.

(a) Contributed by W. M. Graham-Harrison, Esq.

(b) 6 Edw. VII. c. 17, see *supra*, vol. i. p. 131.

(c) 62 & 63 Vict. c. 20, s. 1, see *supra*, vol. ii. p. 27.



**Mining** (No. 23).—This Act consolidates the law as to mining fields and mining operations.

**Cremation** (No. 27).—This Act makes cremation unlawful in certain cases and allows the Governor to make regulations as to cremation.

**Second-hand Dealers** (No. 28).—Under this Act all second-hand dealers are required to take out licences. Ss. 8 and 9 reproduce the provisions of the General Dealers (Ireland) Act, 1903. (*d*)

**Police** (No. 30).—This Act consolidates and amends the law relating to police government.

**Foreign Companies** (No. 35).—This Act removes, so far as regards a Trustees' and Executors' Company legally incorporated in some other part of his Majesty's dominions, the disability of a foreign company to hold land in Tasmania.

**Game Protection** (No. 38). (*e*)—This Act enables the Governor to declare a close time for kangaroo, deer, and opossum hunting.

**Children's Courts** (No. 39).—This Act requires charges against children (*i.e.* boys under sixteen, and girls under eighteen) to be tried, when the trial is in a city or any other place proclaimed by the Governor, in some place other than the ordinary court-room, and all persons not directly concerned in the case must be excluded from the place of hearing. Where the trial is not in a city, etc., a charge against a child will be heard in the ordinary court-room, but must not be held at the hour when the ordinary business of the Court is being transacted.

**1906** (*f*) Acts passed—Public, 50; Local and Private, 4.

**Salaries of Ministers** (No. 4).—This Act provides for the reduction during the year ending June 30, 1907, of the salaries of certain Ministers and officers of the Executive Council and Parliament. No. 38 raises the salary of the Chairman of the Committees for the Legislative Council.

**Juries' Separation** (No. 5).—This Act reproduces exactly the Imperial Juries' Separation Act, 1897. (*g*)

**Opium-smoking Prohibition** (No. 6).—This Act prohibits absolutely the smoking of opium, and the sale, preparation, or possession of opium in any form suitable for smoking.

Opium in any other form may not be kept without a permit from the Chief Secretary of Tasmania.

Power is given to issue search-warrants, and a penalty of not less

(*d*) 3 Ed. VII. c. 44, ss. 5, 6, see *supra*, vol. i. p. 115.

(*e*) Repealed by No. 53 of 1907, *supra*, p. 83.

(*f*) Contributed by W. M. Graham-Harrison, Esq.

(*g*) 60 & 61 Vict. c. 18.

than £10 or more than £200, with or without imprisonment for not less than one month or more than twelve months, is provided.

**Young Persons' and Women's Detention (No. 7).**—Under this Act provision is made for the detention in some institution, instead of in gaol, of young persons under eighteen and women awaiting trial, and of children and youthful offenders who have been dealt with under the Youthful Offenders, Destitute and Neglected Children's Act, 1896.

**Amendments Incorporation (No. 9).**—This Act provides that where formal amendments to any Act are made by any other Act, the amended Act shall thereafter be printed as amended. (*h*)

**Railway Passengers' Actions (No. 10).**—Actions for injuries brought against the General Manager of Railways are to be stayed till the plaintiff has delivered a statement setting forth certain scheduled particulars. After delivery of particulars the defendant may offer a settlement; but if the action eventually goes to trial, the jury must not be informed of the amount of the offer.

**Interpretation (No. 12).**—In the main this is an enactment of the same provisions as those contained in the Imperial Interpretation Act of 1889. (*i*) It contains, however, certain interesting additional matter: *e.g.* s. 6 provides that marginal notes are not, but that a schedule is to be deemed part of an Act, that the law is to be considered as always speaking (a useful reminder to draftsmen and interpreters of Acts), (*k*) and that the Crown is not bound by an Act unless expressly mentioned; s. 25 lays down rules for the reckoning of time; (*l*) s. 30 contains a useful provision for saving rules on the repeal of the Act under which they were made, which will enable the Tasmanian draftsman to dispense with such a provision as the proviso to s. 98 (1) of the English Patents and Designs Act, 1907 (*m*); and s. 43 provides that an attempt to commit a statutory offence under future Acts is to be punishable as if the offence had been committed.

**Registration of Teachers and Schools (No. 15).**—This Act provides for the appointment of a Registration Board, which is to have the duty of forming a register of teachers and schools. Failure to register a school exposes the proprietor or head teacher to a penalty, and a teacher if not registered will be unable to sue for services rendered as teacher. The regulations to be made by the Registration Board may (*inter alia*) regulate the admission of teachers from other countries.

The Act does not apply to State schools or schools aided by the State.

(*h*) Cf. the provision in 48 & 49 Vict. c. 8 as respects amendments to the imperial Army Act.

(*i*) 52 & 53 Vict. c. 63.

(*k*) Ilbert, "Legislative Methods and Forms," p. 248.

(*l*) See the form in *op. cit.* p. 330.

(*m*) 6 Edw. VII. c. 29, see *supra*, vol. i. pp. 155, 156.

**Life Assurance Companies Amendment.**—No. 16 provides for the issue of a special policy in case of the loss or destruction of an existing instrument of insurance.

**Distribution of Intestates' Property (No. 17).**—Under this Act surviving wives and husbands are put in exactly the same position in the case of an intestacy.

All the property (real and personal) in respect of which a person dies intestate will be distributed as follows:—If no children, but husband or wife, all to husband or wife; if children, as well as husband or wife, two-thirds to them, one-third to husband or wife; and except where the intestacy is partial only, a widower or widow gets, in addition to his or her share, £1000, or where the net value of the estate does not exceed that sum, the whole of the estate.

A male infant not under nineteen, and a female infant not under eighteen, can, if married, make a valid will.

**Marriage Amendment (No. 19).**—This Act provides that defects of various kinds are not to avoid a marriage, *e.g.* the fact that it is celebrated by or before a person who is not a minister of religion or a duly appointed registrar of marriages, if either of the parties was unaware of the defect.

**Secret Commissions Prohibition (No. 21).**—This Act is aimed at the same evil as the Imperial Prevention of Corruption Act, 1907, (*n*) and appears to follow the same lines as existing Acts of Victoria (*o*) and West Australia; (*p*) the offences, however, created by the Act are wider and more numerous than those under the imperial Act, and the Act includes provisions penalising the gift, receipt, offer, or solicitation of secret commissions in return for advice, and secret commissions to trustees in return for substituted appointments.

Among miscellaneous provisions the following may be noted: witnesses who gives incriminating answers may get a certificate protecting them from criminal proceedings; trade custom is not to be any defence to a charge under the Act; and the burden of proof that a gift was not a secret commission is on the defendant.

**Companies (No. 25).** (*q*)—The object of this Act is to remove doubts as to the power of a company to reduce paid-up capital. (*r*)

It also exempts company debentures from the operation of the Bills of Sale Act.

**Bills of Exchange Amendment (No. 29).**—This Act (which is only

(*n*) See *supra*, vol. i. pp. 135, 136.

(*o*) See *infra*, pp. 142, 143.

(*p*) See *infra*, pp. 194, 195.

(*q*) A statement of the law relating to companies may be found in a memorandum prepared for the Imperial Conference, 1907, Cd. 3589, p. 35.

(*r*) Cf. 40 & 41 Vict. c. 26.



temporary, expiring on December 31, 1907) protects a bank which in good faith and without negligence pays a cheque of which the amount has been fraudulently altered, if the cheque has been drawn with such gross negligence as to offer facility for the alteration. This provision is to be printed on, or attached to, every cheque-book issued after the passing of the Act.

The Act does *not* attempt any definition of "gross negligence."

**Local Government.**—No. 31 consolidates and amends the law relating to local government.

**Constitution Amendment (No. 47).**—For the purpose of election for the House of Assembly, Tasmania is to be divided into five electoral divisions, corresponding with those into which it is divided for the purpose of elections for the Commonwealth House of Representatives; and the members of the House of Assembly are reduced from thirty-five to thirty.

The franchise is given to all subjects of the King, male or female, who have lived in Tasmania for six months continuously and are on the electoral roll of any Assembly district; persons are only disqualified if of unsound mind, in receipt of aid from public charitable institutions, or under, or liable to, sentence for any offence punishable anywhere in the King's dominions with at least one year's imprisonment.

## 1907 (*s*)

Acts passed—53.

**Juvenile Smoking Prevention (No. 4).**—S. 2 repeals the Juvenile Smoking Suppression Act, 1900. (*t*)

S. 3 prohibits the use of tobacco by any person under the age of sixteen years; moreover, any such person found in possession of tobacco must satisfy the magistrate or justices that he is not in possession thereof for the purpose of using the same, or of permitting the same to be used by any person under the said age.

S. 4 enacts that any male person, apparently under the age of sixteen years, who is suspected of being in possession of tobacco, shall satisfy the inquiries of any constable.

S. 5 prohibits the supplying of tobacco to juveniles. S. 7 provides that the onus of proof of age shall lie on the person charged under the Act. S. 8.—Offences under the Act to be dealt with summarily.

**Trustees (No. 5).**—This Act amends the Trustees Act, 1898. (*u*). S. 3 empowers any trustee (being one of two or more trustees) who resides or is about to reside out of Tasmania, to delegate his powers to any person or persons residing in Tasmania, unless such delegation is

(*s*) Contributed by B. G. Ferrers, Esq.

(*t*) See *supra*, p. 62.

(*u*) See *supra*, p. 59.

expressly forbidden by the instrument, if any, creating the trust. The consent of co-trustees is necessary. Trustees so delegating their powers are to be liable for the acts and defaults of their attorneys.

S. 4.—Trustees may, where there are more than two trustees, authorise any bank to honour cheques drawn upon the banking account of the trust by any two or more of the trustees.

**Electoral (No. 6).**—This is an Act to regulate Parliamentary Elections.

S. 2 repeals the Electoral Act, 1901, (x) and the Electoral Amendment Act, 1904.

S. 63 makes a member of one House of Parliament ineligible for nomination for the other House.

**Larceny (No. 8).**—By this enactment the Larceny Act, 1863, is amended. S. 2 reproduces the provisions of the Larceny Act, 1901 (England). (z) S. 3 provides that a person employed to collect money who fraudulently applies the same to his own use, shall be guilty of larceny. No prosecution can be commenced under this section without the consent of the Attorney-General or the Solicitor-General.

**Habitual Criminals and Offenders (No. 17).**—S. 2 (1). Persons convicted of certain offences who have been previously convicted on at least two occasions of offences falling within the same class, may be declared to be habitual criminals.

(2) Persons convicted of any offence mentioned in Class II. of the Schedule to the Act may, on proof of at least four previous convictions of offences enumerated in Classes I. or II., be declared by the judge to be habitual criminals, and be detained in a reformatory prison.

S. 3 empowers a justice or magistrate in certain cases to order a person who has been summarily convicted to be brought before the Supreme Court to be dealt with as an habitual offender.

Ss. 6–8 provide for the release of habitual criminals and offenders. Any person detained under this Act may apply to the Supreme Court or a judge thereof for a recommendation that he may be discharged. The Court or judge may then make inquiry, and, on being satisfied that the applicant has sufficiently reformed, or that there is some other reason sufficient to warrant his discharge, may recommend the Governor to discharge him accordingly. The Governor may then direct the release of the applicant. Persons so released are required to make a report to the police once in every three months for a period of two years, failure to comply with this provision being punishable on summary conviction.

Provided the person released has not failed during the said period to make this report, and has not been again convicted and directed to be

(x) See *supra*, p. 66.

(z) See *supra*, vol. i. pp. 77, 78.

recommitted to a reformatory, he will cease to be an habitual criminal or an habitual offender, as the case may be.

**State Advances** (No. 20).—By this enactment the Governor is empowered to establish and maintain a bank for the purpose of promoting the occupation, cultivation, and improvement of the agricultural lands of Tasmania and its dependencies. The bank may make advances to farmers and other producers for certain specified purposes.

**Deserted Wives and Children** (No. 22). This Act amends the Deserted Wives and Children Maintenance Act, 1873.

S. 4 provides that in certain cases where a wife has been deserted by her husband, or a child has been left by its father (the husband or father being out of Tasmania), the cost of bringing the defendant back is to be borne by the State.

**State Scholarships** (No. 26).—By this enactment State Scholarships are provided for candidates under the age of thirteen years.

**Motor Traffic** (No. 27).—Part II. deals with Regulations :

S. 6 gives power to the Governor to make regulations for the use, control, lighting, registration, etc., of motor vehicles. The right to disallow any such regulation is given to both Houses of Parliament.

Where any regulation made under this Act is inconsistent with any regulation or bylaw made by any municipal council or other local authority, the former is to prevail.

Part III. makes penal provisions, and contains clauses similar to those found in the Motor Car Act, 1903 (England). (a)

S. 7 is directed against reckless driving ; ss. 8 and 9 deal with the question of licences.

**Local Government (Traction Engines)**.—No. 30 is an Act to regulate traction engines. It embodies several of the provisions of the statutes of England and of Victoria.

**Justices** (No. 36).—By s. 6 of this Act the Governor is given power to appoint district justices of the peace.

S. 7. Mayors of every city and wardens of every municipality are to be justices *ex officio*. By virtue of s. 12 of the Act, every police magistrate has power to do alone whatever might be done by two or more justices sitting in petty sessions.

**Exploration** (No. 38).—This is an Act to appropriate the sum of £2000 for exploring certain country.

**Local Government (Tramways)** (No. 49).—Part I. gives power to any fifty or more owners of rateable land to petition the council to take a poll of the owners of land within the whole or any part of the municipality, to decide the question of surveying a tramway route.

S. 2. The council may refuse or accede to the request. If a poll is

(z) See *supra*, vol. i. pp. 105-107.



taken and is in favour of a survey, the council may request the Governor to have a survey made. The Governor may then grant a survey, and may authorise the payment of the expenses thereof out of any moneys provided by Parliament for that purpose (ss. 3-8).

Part II. deals with the constitution of the tramway area.

Part III. provides for the control and construction of tramways.

**Infant Life Protection (No. 51).**—Part II. deals with nursing homes, and provides for the registration, management, and inspection of such institutions.

Part III. provides for the maintenance of infants. A single woman with child may take proceedings against the father, whereupon the Court has power to require the defendant to pay for the maintenance of the mother during the two months preceding the birth of her infant, and also for the expenses of the maintenance of the mother and infant for the two months immediately succeeding its birth.

**Game Protection.**—No. 53 (*a*<sup>1</sup>) is an Act to consolidate and amend the laws relating to the protection of game.

Ss. 5-7 provide for the protection of "imported" game. Pheasants, partridges, and grouse come within this category.

S. 10 imposes penalties for killing "native" game during the breeding season of such game.

S. 11 forbids the use of any gun, other than such guns as are habitually raised at arm's length and fired from the shoulder, for the destruction of certain species of wild-fowl.

By ss. 18-21 the hunting of kangaroos, deer, etc., is forbidden during certain periods. Nevertheless, any person may during the close season kill any kangaroo or opossum (*a*<sup>2</sup>) upon his own land for the *bonâ fide* protection of his crops; but the skin of the animal killed is to be the property of the Crown (s. 21).

Ss. 23-30 deal with the subject of licences.

## 5. VICTORIA.

1898 (*a*)

Acts passed—84.

Of the Acts passed in the first and second session of the Seventeenth Parliament of the Colony of Victoria, a very large proportion are merely local in their character. Amongst those worthy of notice are the following:—

(*a*<sup>1</sup>) See *supra*, pp. 75, 77.

(*a*<sup>2</sup>) See *supra*, pp. 62, 63.

(*a*) Contributed by H. E. Gurner, Esq.

**Dangerous Buildings** (No. 1519).—The Dangerous Buildings' Removal Act, which provides for the speedy removal of any dangerous building within the City of Melbourne. It is somewhat similar in character to the corresponding Acts here. This Act is a tentative measure, as it is only to continue in force until December 31, 1898. (b) It is remarkable in some of its provisions. By s. 8 the workman is to be paid 1s. 3d. per hour, notwithstanding any agreement to the contrary. By s. 9 any workman injured while at the work is (1) to be paid during total or partial disablement the full wages at which he was employed for the period during which he is so partially or totally disabled, but in the whole not exceeding three years; (2) if he die, then three years' wages are to be paid to his representatives, or, if he leaves no dependants, then the reasonable expenses of his medical attendance and burial. Nothing is to affect the existing civil liability of the employer, and if the injuries or death are caused by the serious and wilful misconduct of the workman, the employer is not liable.

**Evidence** (No. 1554).—The Evidence Act requires all courts of the Colony of Victoria to take judicial notice of all Acts of any Australasian Colony, also of orders in council or despatch of any Secretary of State: the *prima facie* evidence to be in one case the Government printer's copies and in the other the *London Gazette*. By s. 10 the signatures of certain officers therein mentioned are to be judicially noticed.

**Drugs** (No. 1572).—By the British Pharmacopœia Act, to be read as one with the Medical Act of 1890 (No. 1118), the British Pharmacopœia is substituted for the pharmacopœia in force in Victoria at the time of the passing of the Act.

**Wages not to be Attachable** (No. 1573).—The Wages' Attachment Act provides that after the commencement of this Act no order shall be made by any court or judge or justice attaching the wages of any clerk, servant, or labourer except as provided by s. 3. That section provides that if the amount exceeds £2 per week, whether payable yearly, monthly, weekly, or daily, or by piece or at a fixed price, or otherwise howsoever any surplus above that rate may be attached, but no costs or expense of any such attachment, other than sums paid for court fees or stamps shall be chargeable against such person unless the rate of wages exceed £4 per week. S. 4 defines wages and workman, and makes an independent contractor come within the scope of the Act.

**Railway Committee Fees** (No. 1579).—The Railway Standing Committee Act provides for the payment of one and a half guineas to the chairman, and one guinea to the members of this committee, for each attendance.

S. 4, sub-s. 2, limits the amount so paid to an aggregate sum of £1250; and s. 5 provides that the payment does not constitute the offices of chairman and members as an office or place of profit under the Crown.

**Marriage (No. 1582). (c)**—The Marriage Act, by s. 5, provides that the following persons may celebrate marriages:—

- (1) A minister of religion whose name is registered in the office of the Government statist.
- (2) The Government statist or any registrar of marriages heretofore or hereafter appointed.

Under s. 7 a minister of religion is one ordinarily officiating as such in one of the religious denominations, or one officiating in a denomination which has been declared in the *Government Gazette* to be a religious denomination.

Then follow a number of sections defining who shall be registered and who not, in order to prevent improper persons being so registered. An appeal from the Government statist's refusal to register is given, and it is to the responsible Minister of the Crown.

By s. 14 (1) any minister who has been convicted of felony or indictable misdemeanour, or (2) who is guilty of any misconduct in the celebration of any marriage, or (3) is guilty of such impropriety as to time, mode, manner, or place, or (4) is guilty of any breach of the Marriage Acts, may be prohibited from celebrating marriages by the Governor in Council. A Court of inquiry of not less than three persons nor more than five, of whom a county court judge must be one, is to be appointed to inquire into any charge of misconduct before prohibition.

By s. 17 any unauthorised person celebrating a pretended marriage incurs a penalty of £20.

By s. 18 Quakers and Jews are exempted from the operation of this Act.

Marriages may be prohibited in certain houses or buildings by publication in the *Government Gazette*. No such order shall, however, be made in the case of a house or building *bonâ fide* used as a place of worship.

By s. 23 a written notice of an intended marriage before the Government statist or registrar must be posted outside his office at least three days before the performance of the marriage. The marriage must also be celebrated with open doors. No marriage shall be avoided by non-compliance with these provisions, but a penalty not exceeding £20 for their breach is provided.

Marriage must take place between the hours of 8 a.m. and 4 p.m.



By s. 25 the mother, in the case of marriage of minors, must give her consent if she has been unlawfully deserted by her husband or obtained a protection order or judicial separation or divorce from her husband.

By s. 31 all persons having in their possession or control any register or books of entries or register books of baptisms, marriages, and burials in the district of Port Philip, in the Colony of Victoria, prior to January 18, 1853, are required within six months from the commencement of the Act to send them to the Government statist, or they may send copies verified by statutory declaration, and give an undertaking to produce the books at any reasonable time to any person on payment of a fee of 5s., and shall also, if required, supply a certified copy of any entry to such person.

**Inspection and Storage of Export Produce (No. 1591).**—The Exported Products Act provides for the thorough inspection of live stock, butter, cheese, meat, fruit, and dairy produce, and the storage in cool stores prior to exportation of all perishable goods in those classes. The inspectors shall mark each case with the Government stamp. Any person altering or using such stamp when once used, or mixing any product so examined with any other not examined, is subject to a penalty of £50 or twelve months' imprisonment.

**Registration: Illegitimate Child (No. 1593).**—The Registration of Births, Deaths, and Marriages Act provides by s. 23 that when a father of an illegitimate child is the informant, and desires to be registered as the father of the child, the surname of the child shall be the same as that of the father.

**Dentists: Examination (No. 1595).**—The Dentists Act, to be read as one with part two of the Medical Act of 1890, provides for the examination of dentists by a board, called a dental board, constituted as mentioned in the Act, and provides penalties for unlicensed persons carrying on the business.

**Land (No. 1602).** (*d*)—The Land Act, to be read as one with the Land Act of 1890, is a long and complicated Act of 184 sections. Acts of this kind are passed throughout the Colonies every few years.

## 1899 (*e*)

Acts passed, 53.

**Australian Federation (No. 1603).**—Of the Acts passed during this session of Parliament, the Australian Federation Enabling Act is the one of paramount importance.

(*d*) See repealing Act, 1901, No. 1749, *infra*, pp. 96, 97.

(*e*) Contributed by Henry E. Gurner, Esq.

**Parliamentary Elections: Plural Voting** (No. 1606).—By No. 1606, entitled the Constitution Act Amendment Act, plural voting in the elections of members of the Legislative Assembly is abolished. By s. 4, sub-s. 1, it is made unlawful after the expiration or dissolution of the existing Legislative Assembly for any person on one day to vote in more than one electoral district at any election or elections. By sub-s. 2 a maximum punishment of a fine of £50, or three months' imprisonment, is imposed for the offence, and by sub-s. 3 any votes so improperly given are absolutely void. By s. 5 the returning officer is directed to ask the elector whether he has already voted, and s. 6 prescribes that if such elector omits or refuses or declines to answer such question distinctly in the negative, he is subject to a maximum penalty of a fine of £20, or one month's imprisonment, and by s. 7, if he wilfully answers falsely, the fine is £50, or three months' imprisonment.

**Vermin** (No. 1615).—An Act to amend the Vermin Destruction Act, 1890. Every council of every municipality shall pay 2s. 6d. for the destruction of every fox within its territory. By s. 4 the Governor in Council shall repay them half the sum so paid, and by s. 5 they are allowed to pay a larger reward out of their own funds, but a provision is inserted that the Government shall not pay more than 1s. 3d. per head for each fox so destroyed.

**Equipment of Contingent for Foreign Service.**—No. 1619, entitled the Victorian Military Contingent Act, is an Act to remove any doubts as to the power of the Colony to provide forces for service outside the boundaries of the Colony, such doubts arising under s. 177 of the Army Act, 1881 (Imperial Statute). (f) By s. 4 a sum of £30,000 was provided by the Colony for their equipment, transport, payment, and maintenance.

**Second Victorian Contingent.**—No. 1627 provides for a second Victorian contingent for South Africa and £35,000 is set apart for its equipment, etc.

**Income Tax** (No. 1635).—The Income Tax Act, by s. 4 provides for the imposition of the tax on all income derived by any person from personal exertions—

- (a) 4d. in the £ up to £1200,
- 6d. „ „ £2200,
- 8d. on all sums over that ;

on income derived from the produce of property—

- (b) 8d. in the £ up to £1200,
- 1s. „ „ £2200,
- 1s. 4d. over that amount.

(f) 44 & 45 Vict. c. 58, s. 177.

**Municipal Contributions to South African Contingent (No. 1640).—**The South African Contingents Constitution Act makes it legal for any municipality or any bank or incorporated company to contribute out of its funds to any fund raised in aid of the Victorian contingents or their wives and families.

**Obscene and Indecent Advertisements.**—No. 1643, an Act to amend the Crimes Act of 1891, is an Act to deal with obscene and indecent advertisements. In the definition clause, "publishing," in addition to its meaning at Common Law, is to include affixing or inscribing on any building, house, wall, hoarding, gate, fence, pillar, board, tree, or thing so as to be visible to a person. By s. 3 any picture or advertisement, or any printed or written matter in the nature of an advertisement, is to be deemed to be of an indecent or obscene nature if it refers or relates to venereal disease or the relation of the sexes, or to pregnancy or to any diseases peculiar to women, and by s. 4 every person who prints, publishes, distributes, or sends by post, or has in his possession for the purpose of distributing, any newspaper containing any picture or advertisement of an indecent nature shall be liable on conviction for a first offence to a maximum fine of £20, or three months' imprisonment, and for a second or subsequent offence to a fine of £100, or twelve months' imprisonment. By s. 5 any person who distributes or attempts to distribute by means other than a newspaper is liable to a maximum fine of £10, or to be imprisoned for any term not exceeding one month for the first offence, and £50, or six months, for the second or subsequent offences. By s. 6, when a paper is owned by a company, the printer and publisher are made liable for these penalties. By s. 7 the Post-master-General is empowered to stop such indecent matter on its way through the post; by s. 8 any newspaper is prohibited from being imported into the Colony as if it were specified in the Customs Act of 1890 (s. 49); and by s. 9 no prosecution under this Act can be taken except by the police, and then under written authority of the Chief Commissioner of Police, and no such written authority is to be given until any person who distributes any newspapers or advertisement by post containing indecent or obscene matter has been warned in writing by a member of the police force that he will be prosecuted under the Act if after this warning he continues his publication or distribution.

**Gold Extracting Patents.**—No. 1648 enables the Government to purchase for a sum not exceeding £20,000 certain patents and other rights relating to the extraction of gold and silver by the cyanide process in order to render them available for mining purposes at reasonable rates of royalty. By s. 9 the Minister of Mines may issue licences for the use of the process, which shall be in such form and under such terms and conditions as prescribed, the licensee paying such royalty as



is prescribed on all gold and silver produced from any mine, such royalty being not less than  $1\frac{1}{2}$  and not more than  $2\frac{1}{2}$  per cent. on the total value of gold or silver produced from the mine. By s. 10, as soon as the sum not exceeding the £20,000 paid for the patents has been recouped by the royalties, then no licence shall be needed and royalties shall cease to be paid.

**Port Dues** (No. 1650).—The Marine Act lowers the rate of duty paid by a ship in ballast at any Victorian port, and admits certain vessels free of any tonnage duties, viz. those in distress calling for the purpose of being docked or filling coal bunkers, or calling for orders or provisions, without discharging or taking on board any cargo or passengers, or those employed in mission work, or pleasure yachts.

**Water Supply** (No. 1651).—The Water Act is an Act of one hundred and seventy-three sections dealing with waterworks trusts. The election of the commissioners, the appointment of officers, the borrowing and rating powers and the various rights and duties of the commissioners and the people to whom they supply the water—this all seems a matter so purely local in its dealing that it is not proposed to deal with it seriatim.

**Inspection of Meat** (No. 1652).—The Meat Supervision Act provides for meat inspectors. By s. 12, at the expiration of six months after certain meat areas have been constituted, no person is to be allowed to slaughter an animal or dress any carcass at any place except a public abattoir or a private slaughter-house licensed, or any slaughter-house in use within the limits of any city, town, or borough (other than Melbourne) before October 1, 1863, and which has so continued ever since. By s. 13 no private abattoir is to be enlarged without the consent of the Board of Public Health. By s. 26 a register is to be kept at each abattoir of the animals slaughtered. By s. 30 no person is to sell meat unless it has been slaughtered at one of the appointed abattoirs, and branded by the meat inspector as fit for human consumption, or if imported, until it has been certified by the Government inspectors. Penalties are provided for the due carrying into effect of these provisions, and the Board of Public Health have very large powers given them for the purpose of making rules and regulations under the Act, such as for the manner of killing and flaying the animals, for examining the animals before slaughter, for maintaining the cleanliness of the abattoirs, and for the preventing of persons with dangerous communicable diseases from handling the meat.

**Third Victorian Contingent**.—No. 1655 provides for the equipment, etc., of a third Victorian contingent for service in South Africa, and appropriates the sum of £30,000 for that purpose.

1900 (*g*)

Acts passed—46.

**The Federation Proclamation and Commonwealth Act.**—In the volume of Statutes for 1900 is set out the Royal Proclamation constituting as a Federal Commonwealth under the Federation Act the six Colonies of Australia under the title of the Commonwealth of Australia, and declaring the date of its coming into existence as January 1, 1901. After this follows the Commonwealth of Australia Constitution Act, (*h*) also set forth at length.

**Equipment of Naval Contingent** (No. 1657).—This Act is one somewhat similar to several passed in the last Session of Parliament (*i*) as regards South Africa, and provides for a sum of £20,000 for equipping a Victorian naval contingent for serving with her Majesty's forces in China.

**Exportation of Arms.**—No. 1660 is for prohibiting the exportation of arms, ammunition, military and naval stores, and other articles proclaimed by the Governor in Council, which in his opinion are capable of being used as such.

**Bank Holidays.**—No. 1661 is an Act relating to the observance of certain public and bank holidays. It provides that when the birthday of her Majesty or her successor, or of the Prince of Wales for the time being, falls on any day other than a Monday, then the following Monday should be observed as a public holiday and bank holiday instead of such day. By s. 4 of the same Act, the Governor in Council is empowered to proclaim January 26th and April 21st, or either of them, in each and every year as a public and bank holiday.

**Military Service of Police in South Africa** (No. 1666).—This is an Act relating to military service in South Africa by members of the police force or public service. It provides, in s. 3, in the case of the police force, that if any one resigned his office for the purpose of serving in her Majesty's regular forces in South Africa, the Governor in Council or the Chief Commissioner (as the case might be) might, within six months of that person's discharge, appoint such person to the like position in the force which was held by him before his resignation. By sub-s. 2 of s. 3 such military service is to count as service in the police force, both for the purpose of ascertaining his seniority and for determining any gratuity, pension, or retiring allowance to which either his widow, children, or other relation might at any time become entitled under the Police Regulation Acts.

By s. 6, in the case of persons in the public service, they were to be similarly reappointed, and were not to be required to pass any

(*g*) Contributed by Henry E. Gurner, Esq.

(*h*) 63 & 64 Vict. c. 12.

(*i*) See *supra*, pp. 87, 89.

examination or test, except as to their physical and mental capacity, and the military service was to count as public service in a manner similar to that relating to the police.

By s. 7 the franchise of such persons was preserved, and the residence in South Africa and China, including the time occupied in travel to and from Victoria, was to be treated as residence in Victoria.

**Census** (No. 1669).—The Census Act, which appoints March 31, 1901, for the taking of the census, provides, in addition to the particulars required in the Imperial census, that the occupier shall specify to the best of his belief, if he cannot do it with absolute accuracy, the area of his land and the number of his live stock, and also shall, if he do not object, state his religion. Particulars also were required as to the place where children under the age of fifteen were receiving their education.

**Marriage** (No. 1684). (*k*)—An Act to amend the Marriage Act, 1890. By s. 3 of this Act the justices were empowered to make an order against a husband and against the father of a bastard child for maintenance and confinement expenses of the mother of the child. By s. 4 any pregnant woman might apply for and justices might make an order against the father of her child for the confinement expenses, and such order was not to exceed £10. By s. 6 the order was to specify a date not later than five months, when the order should lapse if the child were not born. The money is always to be retained by the clerk of the petty sessions, and in event of no child being born, it is to be returned to the alleged father. By s. 8 the uncorroborated evidence of the woman is insufficient to obtain this order.

**Wine Adulteration**.—No. 1692 is an Act to prevent the adulteration of wine. By s. 4 no person is allowed to manufacture or have in his possession or sell, advertise, offer, keep, expose, or deliver for sale or exchange, or authorise, direct, or allow the sale under the name of wine or dry wine, or sweet wine, or sparkling wine, or under any name popularly and commercially used as a designation of wine, to which before, during, or after the making of the same any "foreign substance" has been added.

By s. 6 the term "foreign substance" is defined as follows, and others may be added by the Governor in Council, viz., ethers, essential oils, bitter almond, cherry, laurel, flavouring substances, alkaloidal substances, compounds of barium, fluorine, magnesium, strontium, bismuth, arsenic, lead, zinc, aluminium, tin, copper, borax, derivatives of naphthol (abristol, etc.), sulphuric acid, formalin or formaldehyde, salicylic acid or other antiseptics except sulphurous acid, as provided for hereinafter, glycerine, saccharine, dulcini, sucrovin, crystallose,

(*k*) See *supra*, p. 85, and *infra*, p. 95.



impure starch, sugar, impure spirits containing fusel oil or aldehydes, organic or mineral colouring matters, germs, and any mixtures containing any of these substances; but by sub-s. (b) of s. 6 "foreign substance" shall not include the following or others declared by the Governor in Council :—

- (1) The addition of yeast or leaven ;
- (2) The addition of substances such as isinglass, gelatine, eggs, albumen (not including blood or milk as such), Spanish clay, kaolin, or tannin, for the purpose of clarification.
- (3) The addition of common salt, provided the chlorine calculated as sodium chloride does not exceed half a gramme per litre or thirty-five grains per gallon.
- (4) The addition of sulphate of lime, also of sulphurous acid as the result of the sulphuring of casks by means of the combustion of arsenic-free sulphur, provided that the total amount of sulphurous acid calculated as potassium sulphate does not exceed two grammes per litre or one hundred and forty grains per gallon ;
- (5) The addition of tartaric acid ;
- (6) The addition of natural products of grape vine leaves or flowers ;
- (7) The addition of pure wine spirit of age not less than six months for the purpose of increasing the alcoholic strength, to the extent not exceeding twenty-eight per cent. of proof spirit or sixteen per cent. of alcohol by volume in the case of dry wines of thirty-five per cent. proof spirit or twenty per cent. of alcohol by volume in the case of sherries, ports, and sweet wines, alcohol in either case being absolute alcohol of specific gravity 0·7938, and measured at the temperature of 60° of Fahrenheit's thermometer.

By s. 7 nothing in this Act is to prohibit the sale of any beverage made from fruit or sources other than fresh grapes, or labelled or branded or designated by any name including the word "wine," provided that the label or brand or designation includes the name of the fruit or source from which it is made and that the name of the fruit or source from which it is made is given on or in the label in letters of the same size as that of the letters of the word "wine."

By s. 8 no person is allowed to manufacture or have in his possession for the purposes of sale, or to sell, advertise, offer, keep, expose, or deliver for sale, any unfermented grape juice to which there has been added any substance the addition of which is prohibited by the Act.

By s. 9 no person shall offer, expose, or deliver for sale any wine unless the bottle is labelled with the name of the wine and the name and address of the vendor or bottler.

By s. 10 no person is allowed to sell sparkling wine in which the excess of carbonic acid gas arises from direct admixture of the

same unless the bottle be labelled "carbonated" in the same sized letters as that of other words on the label. Ss. 11 to 18 provide the means for rendering the Act workable. S. 19 provides a penalty not exceeding £5 for the first offence, up to £20 and three months' imprisonment for a subsequent one. S. 20 gives the Governor in Council power to make any further regulations for carrying the Act into effect.

**Traction Engines** (No. 1693). (*l*)—An Act for regulating the traffic of traction engines. By s. 5 no engine is to be driven without a man one hundred yards in front of it to warn people of its approach.

By s. 6 badly packed stuffing boxes, leaky safety valves, and blowing off steam (except in case of accident) are prohibited.

By s. 7 two men must be with it—one to drive, having a licence so to do—the other to steer the engine and assist vehicles in passing.

By s. 9 traction engines may travel between sunrise and sunset through any city, borough, or shire, but before doing so the owner or driver must give from three to forty-eight hours' notice to the town clerk or shire secretary of his intention, and on receiving such notice the town clerk may order the driver of the engine to proceed by a certain route, and the speed shall not be more than two and a half miles per hour.

By s. 10 any injury to the highway done by the engine is to be made good by the owner or driver, and it shall be lawful for any municipal officer or policeman to detain the engine till the repairs are done or paid for.

S. 11 provides for licences for traction engine drivers at a fee of 5s.

By s. 13 a driver when required by any person driving is compelled to stop his engine till they have passed.

By s. 15 penalties not exceeding £10 are provided.

By s. 16 each engine must be fitted with a spark arrester.

**Victorian South African Contingent** (No. 1698).—This Statute provides for £45,000 being raised for the equipment of the military contingents raised in Victoria for service in South Africa.

**Voting by Post** (No. 1701), entitled "The Voting by Post Act."

By s. 2 as soon as the seat of any member of either House becomes vacant, or after dissolution, notice is to be given in the *Gazette* and in two Melbourne newspapers and one circulating in the district in the form in the first schedule to the Act.

By s. 3 any elector who satisfies the returning officer (1) that he resides at least five miles from the nearest polling booth at which he is entitled to vote, or (2) that he has reason to believe either that on the polling day he will not be within five miles of the polling booth at

(*l*) Repealed by No. 1893 of 1903, *infra*, pp. 105–107.

which he is entitled to vote, or that on account of ill-health and infirmity he will be prevented from voting personally at such polling booth, may apply to the said returning officer for a postal ballot paper.

By s. 5, if the returning officer is satisfied as to the applicant's right to vote, he is to send him a postal ballot paper. If he is not satisfied, he sends the voter a notice that he, the returning officer, not being satisfied as to the applicant's right to vote, he, the applicant, must attend personally to give his vote.

By s. 8 the returning officer shall, on the electoral rolls, record the fact that a postal ballot paper has been posted to such applicant, and the date of the posting. If possible, the returning officer is to notify before the ballot to the presiding officer, and to every deputy returning officer at every polling place at which a roll is used on which the applicant's name appears, the fact of the issue of such postal ballot paper, but in any event he is to notify it immediately.

S. 9 prescribes the mode of voting with a postal ballot paper. The voter is to produce it, not filled up, to any postmaster or officer within the voter's electoral province. Having done so, he is then to write the name of the candidate for whom he votes, but the postmaster or officer is not to see the same. He is then to fold the paper and sign his name in the presence of the postmaster or officer, and the voter is then to enclose the ballot paper in the envelope provided, and hand it to the postmaster or officer. By sub-s. 2 the postmaster or officer is, as soon as practicable, to post the ballot paper to the returning officer, who is to keep it till the close of the poll.

By s. 13 each voter is to be asked before voting if he has received a postal ballot paper, and if such voter, having tendered his vote, refuses or omits distinctly to answer the same, he is liable to a penalty not exceeding £20, or a month's imprisonment. If he makes a false answer, there is a penalty imposed not exceeding a fine of £50, or three months' imprisonment.

By s. 14, on the close of the poll the returning officer is to produce unopened all envelopes containing postal ballot papers up to the close of the poll, and such envelopes are to be opened in the presence of scrutineers and the poll clerk, and no one else. They shall then be dealt with as follows:—

- (a) The returning officer shall produce all applications for postal ballot-papers.
- (b) The returning officer—without unfolding each postal ballot paper, or allowing it to be inspected, shall compare the signature of the voter on the counterfoil with the signature to the application, and allow the scrutineers to inspect the same, and the returning officer



shall determine whether or not the signature on the postal ballot paper is that of the applicant.

- (c) If the postal ballot-paper is allowed by the returning officer he shall tear off the counterfoil without seeing the names of the candidate or candidates voted for, and shall insert the folded postal ballot-paper in a ballot box separate from that used during the polling, and when all such postal ballot papers have been so inserted, the counting of the votes so recorded therein shall commence.
- (d) The list of the number of votes received by each candidate shall show separately the votes tendered personally and the votes given by postal ballot-papers.
- (e) If the returning officer disallows a postal ballot-paper, then such ballot-paper shall be included in a sealed parcel of ballot papers set aside for separate custody and shall be transmitted to the Clerk of the Legislative Council or Assembly (as the case may be) in case the same may be sent for and examined by the Committee of Elections and Qualifications for the Legislative Council or Assembly (as the case may be).

By s. 15 the returning officer's decision can alone be reviewed by the committee of elections and qualifications of either House.

By s. 16 letters sent pursuant to this Act and not delivered within five days are to be returned to the sender.

S. 22 imposes a penalty not exceeding £50 on any person who tries to induce any one in his employ to obtain a postal ballot paper with the intention of influencing such person by bribery or intimidation to record his vote in favour of any particular candidate.

By s. 24 the Act is to come into force on December 1, 1900, and to continue in force for three years.

## 1901 (n)

## Acts passed—59.

**Parliamentary Membership** (No. 1723).—The first Act passed in this session, entitled "The Constitution Act Amendment Act," provides by s. 2 that no member of the Parliament of the Commonwealth of Australia shall at the same time be qualified for nomination or election as a member of either House of the Victorian Parliament. By s. 3 it is provided that if a member of either House of the Victorian Parliament be elected to either House of the Commonwealth Parliament, his seat in either of the former Houses shall be vacant.

**Salary of Governor** (No. 1725).—This Act provides that the salary of future Governors of Victoria shall be £5000 per annum in lieu of £7000.

**Marriage** (No. 1737). (o)—This Act, entitled "The Marriage Act,

(n) Contributed by H. E. Gurner, Esq.

(o) See *supra*, p. 91.

1901," which is to be read and construed as one with Part IV. of the Marriage Act, 1890, gives power by s. 2 to the justices, when the defendant does not find a surety that he will comply with an order for the maintenance of his wife and children, to commit him to gaol with or without hard labour for any term not exceeding twelve months; and it also provides, notwithstanding such committal for a specified term, that the defendant may obtain his release from custody on finding a sufficient surety as aforesaid.

By s. 3, when a husband without reasonable cause deserts his wife or his legitimate children under fourteen years of age, and leaves her or them without support, and goes to reside either permanently or temporarily beyond Victoria, he is liable to be imprisoned with hard labour for a term not exceeding one year.

By s. 4, if he refuses or neglects to comply with a maintenance order for the maintenance of his wife and children, whether illegitimate or not, made under s. 43 of the Marriage Act, 1890, or goes, or attempts or makes preparation to go, beyond Victoria, he is liable to the punishment provided in the last section.

By s. 5, any person deserting wife or children in any other British possession or in the United Kingdom may be dealt with in Victoria by the administration of a similar punishment and under the Fugitive Offenders Act, 1881. (*p*)

By s. 6, it is provided that if any illegitimate child be committed to the care of the Department for Neglected Children, such committal shall be *primâ facie* evidence of its want of means of support.

**Wild Dogs** (No. 1741).—The Wild Dogs Act (s. 2) defines the wild dog or dingo. S. 3 gives power to a municipality to give twenty shillings as a bonus for the destruction of every wild dog, but the council of that municipality is not bound to pay more than £200 per annum for that purpose. By s. 4 the claimant for the bonus must hand the skin to the proper authority, and make a declaration that he did not breed the dog for the purpose of obtaining the reward. By the other sections of the Act the Governor in Council shall pay half the reward, and also municipalities are to be at liberty to pay larger rewards, but the State is to be limited to ten shillings per head. Dogs under six months old are to be paid for at half rates. The Act is to expire on July 31, 1904.

**Land Act** (No. 1749). (*q*)—The Land Act is a long Act of four hundred and twenty-seven sections, being composed of eight parts and many sub-divisions, consolidating the law on this subject. Beginning with the Land Act of 1890, there have been eleven Acts dealing with this question, and this Act now repeals the whole of them, re-enacting parts

(*p*) 44 & 45 Vict. c. 69, Imperial Statute. (*q*) See *supra*, p. 86, and *infra*, p. 118.

of sections, repealing others, and adding fresh ones. There is no continuity in these Acts. They are extremely complicated, and no useful purpose would seem to be served by setting out their provisions *in extenso*.

**Old-Age Pensions** (No. 1751). (*q*<sup>1</sup>)—This Act, entitled “The Old-Age Pensions Act,” is one of thirty-seven sections and came into force on December 7, 1901. By s. 5, a pension, being for the personal support of the pensioner, shall, subject to the provisions of the Act, be absolutely inalienable, whether by way of or in consequence of sale, assignment, charge, execution, insolvency, or otherwise howsoever.

S. 6 provides that the following persons whilst in Victoria shall be qualified to receive a pension :—

- (a) Every one of sixty-five years of age ; and
- (b) Every person of any age who is in permanent ill-health caused by having been engaged in mining or any prescribed dangerous or unhealthy occupation.

No woman having married an alien shall thereby become disqualified to receive a pension.

By s. 7 the following persons are disqualified from receiving a pension :—

- (a) Aliens ; or
- (b) Naturalised subjects of his Majesty, unless they have been naturalised for six months preceding their pension claims ; or
- (c) Chinese or other Asiatics, whether British subjects or naturalised or not ; or
- (d) Aboriginal natives of any State of the Commonwealth of Australia or of New Zealand.

By s. 8 no person shall receive a pension unless he fulfils the following requirements—viz. :—

- (a) That he is residing in Victoria on the date when he establishes his claim to the pension ; and also
- (b) That on such date he has so resided, whether continuously or not, for at least twenty years ; and also
- (c) That he has not been absent from Victoria, whether continuously or not, for more than five years during the time from which the said twenty years commenced to run ; and also
- (d) That he has resided in Victoria continuously for not less than five years immediately preceding such date ; and also
- (e) That during the period of two years immediately preceding such date he has not been convicted three times or upwards in respect of drunkenness ; and also
- (f) That during the five years immediately preceding such date he has not been imprisoned for any period or periods amounting in the whole to six months or upwards ; and also

(*q*<sup>1</sup>) See *infra*, p. 155.



- (g) That during the period of twenty years immediately preceding such date he has not for any offence or offences been imprisoned for any period or periods amounting in the whole to three years or upwards with or without hard labour ; and also
- (h) That if a husband, he has not for twelve months or upwards during five years immediately preceding such date without just cause deserted his wife or without just cause failed to provide her with adequate means of maintenance or neglected to maintain such of his children as were under the age of fourteen years, or that, if a wife, during five years immediately preceding such date she has not for twelve months without just cause deserted her husband or deserted such of her children as were under the said age ; and also
- (i) That his average weekly income during six months immediately preceding such date did not amount to eight shillings or upwards ; and also
- (j) That the net capital value of his accumulated property, whether in or out of Victoria, does not amount to £160 or upwards ; and also
- (k) That he has not directly or indirectly deprived himself of property or income to qualify for or in order to obtain a pension ; and also
- (l) That he has made reasonable efforts to provide for himself, or has brought up a family in decency or comfort ; and also
- (m) That the husband, wife, father, mother, or the children of the claimant, or any or all of them, are unable to provide for or maintain the claimant ; and also
- (n) That he is unable to maintain himself ; and also
- (o) That he has not at any time within twelve months been refused by a commissioner a pension certificate except for the reason that he was disqualified on account of his age, or for reasons which are not in existence at the time of the further application.

S. 9 deals with disqualifications arising from short absences from the Colony.

S. 10, sub.-s. 1, limits the pension to eight shillings per week, but the Commissioner may give any less sum he decides to be reasonable and sufficient. By sub.-s. 2 of this section, when the claimant, although sixty-five years of age, appears to be physically capable of earning or partly earning his living, the pension claim may be refused or a lesser sum than the eight shillings granted.

By s. 11 the pension shall be at such rate as will make the total income of the claimant from all sources eight shillings per week. Provided, however, that to the extent of two shillings per week received by the claimant as wages in respect of personal labour, such sum shall not be taken into account in the computation of his income from all sources, but such pension shall be diminished by sixpence for every complete £10 capital value of all property owned by claimant (not including furniture and personal effects to the value of £25) which does not return income.

S. 12 provides for the method of assessment of the value of accumulated property. By sub-s. (d) the net capital value of husband's and wife's accumulated property shall be deemed to be not less than half the total net capital value of the accumulated property of both after allowing one deduction of £50. This provision does not apply when husband and wife are living apart under decree or order or deed of separation.

By s. 13, in the computation of income, sub-s. (a) provides that when any person receives board or lodging the actual value of such, not exceeding five shillings per week, shall be included in such computation ; (b) in the case of husband and wife, the income of each shall be deemed to be not less than half the total income of both. This does not apply when legally separated.

Ss. 14 and 15 provide for the making of claims, and the manner in which the *bonâ fides* of them may be investigated. Confidential reports are to be furnished on demand by banks, companies, friendly societies, etc. Strict rules of evidence are not to be binding. Power is also given to send the claimant to a benevolent asylum or charitable institution, if the Commissioner is of opinion the claimant is unfit to be entrusted with the pension, and there is practically no appeal given from the Commissioner's decision.

By s. 16 the registrar is directed to send a notice to the husband, father, mother, or children over twenty-one of any claimant, requiring each of them to furnish a declaration as to their means and ability to support the claimant. If no return is made after due time, the relatives may be summoned before the Commissioner, who shall have all the powers of a Court of Petty Sessions, to show cause why they should not contribute towards the costs of the pension of the claimant or pensioner. The onus of proving that a person summoned is not a relative of the claimant or pensioner is to be on the person so summoned. The Court can make an order for 8s. a week against any one relation, although it may appear that other relations may be liable. Punishment of imprisonment for one month in default is provided, and cases may be heard *in camera*.

By s. 21 no person shall receive a pension certificate till he has executed an undertaking to transfer his property to the Treasurer of Victoria and authorising him to sell it.

By s. 26 payments of the pension may be made to ministers of religion or other persons named for the benefit of the pensioner.

S. 27 provides that the pension shall not be paid if the pensioner is in prison, or in a lunatic asylum, or a hospital, or out of Victoria, but that it shall be forfeited ; and it further provides that when the pensioner is discharged from any asylum or hospital after having been there more

than twenty-eight days, his pension shall be resumed, dating back twenty-eight days previously to his discharge.

By s. 28 no person in a benevolent asylum shall draw a pension.

By s. 30 imprisonment with or without hard labour, not exceeding six months, is provided for offences against the Act—

- (a) By false statements obtaining, or attempting to obtain, a certificate or pension ;
- (b) By unlawful means attempting to obtain or obtaining payment of a forfeited instalment of a pension ;
- (c) Personation ;
- (d) Aiding or abetting others in commission of the above offences ;
- (e) Wilfully lending pass certificates to any other person.

By s. 31 the Court, in addition to the punishment imposed by the last section, can—

- (a) Cancel any pension ;
- (b) Reduce it ;
- (c) Impose a penalty not exceeding twice the amount of instalment wrongfully obtained ; or if the defendant is a pensioner, direct forfeiture of future instalments of his pension equal in amount to such penalty.

S. 32 (1) provides that when a pensioner is convicted of drunkenness or any offence punishable by imprisonment for not less than one month, then in addition to any other penalty the Court may order forfeiture of one or more instalments falling due after conviction. By sub-s. 2, when in the opinion of the Commissioner the pensioner mis-spends any part of his pension, or wastes or lessens any part of his income or earnings, or injures his health or endangers or interrupts the peace and happiness of his family, the Commissioner may, on complaint of the registrar or any paymaster or policeman, make an order directing that until further order the instalments shall be paid to a benevolent or charitable society, minister of religion, justice, or other person for the benefit of the pensioner, or cancelling the pension certificate or directing a forfeiture of some of the instalment. By sub-s. 3, when a pensioner is twice within twelve months convicted of any offence punishable by imprisonment for not less than one month, or of drunkenness, or when he is convicted of any offence punishable by imprisonment of twelve months or upwards, the Court shall cancel the pension certificate. By sub-s. 4 the pass certificate is to be delivered to the clerk of the Court and sent by him to the registrar.

By s. 33, notwithstanding that a pensioner has not been convicted of drunkenness, the registrar may at any time summon him to show cause why his pension should not be cancelled, reduced, or suspended for a term on account of such pensioner's drunken or intemperate habits, and



the Commissioner may, if he thinks fit, cancel, reduce, or suspend such pension accordingly.

By ss. 34 and 35 the pensions are charged on the Consolidated Revenue, and an annual return is to be made of them to Parliament.

S. 37 gives the Governor in Council power to make regulations for carrying out the Act.

**Betting.**—No. 1765 is an Act entitled "The Sports Betting Suppression Act, 1901." Ss. 3, 4, and 5 provide that the promoter of any sports, by advertising in a local newspaper and posting notices at the gateways and on the ground, may prohibit wagering and betting thereat. S. 6 provides a penalty not exceeding £20 for any person who, on the ground or in any place adjacent thereto, whether on his own behalf or for any other person, wagers or bets, or offers or promises to pay any wager and bet. S. 7 provides that any other person so doing may be removed or apprehended without warrant by the police. By s. 8, if a person so removed re-enters the ground, he may be fined a sum not exceeding £50, or imprisoned for any period not exceeding three months, or incur both penalties in respect of each re-entry. By s. 9, any person removing the notices alluded to in s. 5 shall be liable to a penalty not exceeding £5.

**Trusts** (No. 1769).—The Trusts Act provides that as soon as the executor or administrator of the estate of any deceased person has procured the registration of some other person as the holder of some shares not fully paid up in an incorporated company, without reserving any portion of such estate for the payment of any calls to be made, he shall be freed from personal liability for any call after the registration of the other person as holder, but it shall not affect the right of the company in its liquidation to follow the assets of the deceased person.

**Sale of Diseased Plants** (No. 1773).—The Vegetation Diseases Act makes it an offence, with a penalty not exceeding £10, for any person to sell or expose for sale or to cause to be sold or exposed for sale any diseased tree, plant, or vegetable.

**Gold Buying.**—No. 1780 (*r*) is an Act entitled "The Gold Buyers Act. S. 2 is the definition clause. S. 3 provides that after March 1, 1902, no unlicensed person shall buy unwrought gold or gold amalgam. Ss. 4 to 7 provide for the licensing of buyers, the latter section allowing the manager or representative of any banking company in any locality to obtain a licence without any certificate of character. S. 8 provides that no Chinese person is to be licensed—this by the definition clause includes a half-cast. By s. 20 no licensed gold buyer shall smelt, work, use, or deal with any unwrought gold or gold amalgam until five days after he has purchased the same. By s. 25 no child under fourteen

(*r*) See *infra*, p. 162.

shall sell gold. By s. 26 no buyer shall buy gold except at the place where he carries on his business. Any offence against the Act is provided for in s. 23 by a penalty not exceeding £50, to be recovered in a summary way.

**1902 (s)**

Acts passed—8.

Three of the Acts in this short session deal with the Consolidated Revenue, and one other with the deposit receipts of a municipality.

**Corporations as Joint Tenants.**—The Bodies Corporate (Joint Tenancy) Act (No. 1784) gives power to corporations to hold property as joint tenants with the proviso that they shall be liable to the same conditions and restrictions as attach to the acquisition and holding of property by a body corporate in severalty.

S. 2 provides that when a corporate body is a joint tenant of any property, on its dissolution this property shall devolve on the other joint tenant.

**1902-3 (t)**

Acts passed—55.

**Financial Retrenchment.**—No. 1793 is a Retrenchment Act redeeming the payment of the President and Chairman of Committees of the Legislative Council, the Speaker and Chairman of Committees of the Legislative Assembly, judges of county Courts, persons in the public service, including the railways, the police force, and comprehensively all persons whose remuneration is a charge upon the funds of the State. Another Act, No. 1803, withdraws the allowance for rent formerly made to some public officers.

**Christian Reunion.**—The Churches or religious denominations known as the Wesleyan Methodist Church, the Bible Christian Church, and the United Methodist Free Church having agreed to unite in one body, called the Methodist Church of Australasia, No. 1799 confirms the arrangement as far as it requires legislative sanction. The constitution of the United Church is annexed as a schedule to the Act.

**Agricultural Loans.**—No. 1816 is an Act authorising loans to be made to cultivators for seed and fodder upon lines similar to enactments in other parts of the Empire.

**Income Tax.**—*Inter alia*, No. 1819 enacts that—

income of any taxpayer from any trade carried on in Victoria shall to the extent of £4 per centum of the surplus of assets of such taxpayer employed or used in such trade over and above the liabilities thereof during the year

(s) Contributed by H. E. Gurner, Esq.

(t) Contributed by C. E. A. Bedwell, Esq.

immediately preceding the year of assessment be chargeable with tax as income from property, and beyond such extent shall be chargeable with tax as income from personal exertion.

Special provisions are made as to the amount of income payable by insurance companies.

**Coroners.**—Inquests under the authority of No. 1828 may be held by coroners without a jury, unless a law officer directs to the contrary.

**Legitimation per subsequens matrimonium.**—An amendment to the Registration of Births, Deaths and Marriages Act, 1890, No. 1835, authorises legitimation *per subsequens matrimonium*.

**Legal Profession.**—No. 1837 is entitled "An Act to remove some anomalies in the law relating to women." By it—

No person shall by reason of sex be deemed to be under disability for admission to practise as a barrister and solicitor of the Supreme Court of Victoria, any law or usage to the contrary notwithstanding.

## 1903 (u)

## Acts passed—52.

Four Acts were passed in a second session of the year 1903. Three of them related to financial matters and the fourth was rendered necessary by the railway strike, and gave additional powers to the Government "in order to restore to the public the full use of the railways of the State."

**Constitutional Reform.**—Of the group of Acts which fall under this head, the principal is the Constitution Act (No. 1864), which was reserved for the Royal assent on April 7th, and proclaimed on November 26th. The general object of the measure is a reduction of the scale and cost of central government in obedience to a demand for retrenchment consequent upon the transfer of important services from the State to the Commonwealth. The maximum number of salaried Ministers is reduced from ten to eight, and their salaries from £10,400 to £8,400; and the number of members of the Legislative Council and Assembly is reduced from forty-eight to thirty-five and ninety-five to sixty-eight respectively. In the case of the Council, two-member constituencies are substituted for the old three- or four-member constituencies, and in the case of the Assembly, the single-member district is now made universal. The reduction of Ministers and members originally proposed was even more drastic; but the scheme was modified in this, as in some other respects. Amongst the proposals abandoned was women's suffrage. The freehold qualification still required of members of the Council was reduced from £100 to £50



annual value; and the qualification of electors based on a municipal valuation of £25 annual value was reduced to £15. The qualification of electors and members of the Assembly was unaltered, save for a provision checking the issue of voters' certificates so as to hinder the packing of constituencies before an election. There are several novel features in the Act. First, the Continental system whereby Ministers are permitted to speak in either House is adopted in a modified form in s. 9, whereby, with the consent of the House, a "responsible Minister of the Crown" may sit in that House of which he is not a member for the purpose of explaining any Bill relating to or connected with any department administered by him, and may take part in any debate or discussion therein on such Bill. Secondly, the Act requires that any responsible Minister of the Crown shall secure a seat in Parliament within three months of his appointment upon pain of loss of office (s. 6)—a provision taken from the Commonwealth Constitution, and a step onwards in the statutory recognition of Cabinet Government. Thirdly, the Act contains a distinctive and remarkable change in respect to public servants. (x) "Public officers" and "railway officers" possessing the ordinary electors' qualifications are taken out of the territorial constituencies of which they have hitherto been a part by reason of residence or property, and are formed into a single constituency returning one member to the Council, and two constituencies returning respectively one member for the "public officers" and two members for the "railway officers" to the Assembly. Any public servant may be elected, and is regarded during his service in Parliament as on leave of absence without pay (ss. 25-9). Next there are some important provisions as to the relations of the Council and Assembly, a matter which in the past has brought about more than one grave crisis in Victoria. First, as to money-bills, the long-standing dispute as to the interpretation of the provisions in the Constitution Act, 1855, (y) is terminated by a statutory compromise, the most important feature of which is the adaptation of a scheme of the Commonwealth Constitution (s. 30). In those cases in which the Council may not amend a Bill it is permitted to make suggestions at certain definite stages, but so that the suggestion may not be repeated until the Bill has been advanced another stage. This is a limitation dictated by the experience of the Commonwealth, where the Senate has insisted on its power to repeat and press suggestions in a way which makes the power hardly distinguishable from a power to amend. For the settlement of disputes between the Houses, the Constitution again draws inspiration from the Commonwealth Constitution. S. 31 enacts that if the Assembly

(x) Repealed by No. 2075 of 1906, *infra*, p. 146.

(y) See Hearn's "Government of England," Appendix IV., p. 613.

passes any Bill, and the Council rejects or fails to pass it, or passes it with amendments to which the Assembly will not agree, and the Assembly is dissolved by proclamation declaring the dissolution to be in consequence of the disagreement, and the Assembly again passes the Bill, the Governor may dissolve the Council and Assembly simultaneously. Here the machinery for settlement of disputes somewhat abruptly ends. It was part of the scheme that the simultaneous dissolution should be followed by a joint sitting of the Houses, but the Council refused to accept the proposal. There are certain limitations imposed on the scheme to ensure that the first dissolution shall really be a special dissolution, and not the dissolution of an expiring Parliament, and to prevent the simultaneous dissolution being held indefinitely over the head of the Council. The scheme is not to apply to proposals for the amendment of the Constitution under s. 60 of the Act of 1855.

The Electoral Districts Boundaries Act (No. 1895), the Electoral Provinces Boundaries Act (No. 1896), and the Electoral Rolls Act (No. 1872) are consequential machinery Acts. The Ministers and Special and other Appropriations Retrenchment Act (No. 1849) sufficiently indicates its character by its title; the reductions range from 3 per cent. on salaries between £125 and £150, to 10 per cent. on salaries of £1000 and upwards.

**Electoral Expenses.**—The Electoral Expenses Limitation Act (No. 1891) is in its principal feature based upon Lord James of Hereford's Act of 1883. (2) It specifies the objects upon which electoral expenses may lawfully be incurred, and fixes the maximum amount of expenditure by a candidate in a Council election at £400, and in an Assembly election at £150. Candidates are to be allowed the free use of State school buildings for meetings, but must pay for the cost of lighting, cleaning, and repairing any damage (s. 12). S. 14 deals with a matter outside the Act—the publication of false statements concerning a candidate, upon which it adopts the provisions of the English Act of 1895. (a) The last section of the Act is somewhat mysterious, and if it is literally construed may go a long way to undo the rest of the Act in relation to Council elections. It declares that "no candidate for election as a member of the Legislative Council shall be chargeable with any electoral expenditure under this Act, unless the expenditure by him or on his behalf shall be expressly authorised in writing by such candidate and signed by him."

**Local Government (b)** (No. 1893).—This was a very important and comprehensive Act. Though it introduced few new principles, it

(2) 46 & 47 Vict. c. 51.

(a) 58 & 59 Vict. c. 40.

(b) This statement has been contributed by J. T. Collins, Esq., one of the draftsmen of the Act.

consolidated eighteen Statutes, and contained a number of amendments and new provisions to facilitate administration. In Victoria, apart from the city of Melbourne and the town of Geelong, which are governed by special Acts, the whole State is divided into municipal districts, subject to the control and management of municipal councils. The rural and sparsely settled districts are generally denominated "shires," and the urban and more populous districts "boroughs." The scheme of local government was initiated in 1854 by the Municipal Institutions Act, which provided for the creation of municipal districts of limited extent in the more settled parts of the State. In 1863 the Road Districts and Shires Act dealt in like manner with the less settled areas. In 1869 two Acts were passed concurrently, the Boroughs Statute for urban districts and the Shires Statute for rural districts, in which the provisions of the former Acts were re-enacted and the powers of councils extended. These in turn were amalgamated in the Local Government Act, 1874, which was included in the general consolidation of the Statutes in 1890. Subsequently, a great many Amending Acts were passed, and suggestions made for further amendments; and in 1889 a Parliamentary Committee, which afterwards became a Royal Commission, was appointed to inquire into and report upon the numerous amendments required in the law relating to local government. The report of the Royal Commission was completed in 1902; and as part of that report the Commission submitted a draft Bill which, with slight alterations, was passed by Parliament and became the Local Government Act, 1903. In its report the Commission said:—

After mature consideration, we find that the scheme of local government which was initiated in Victoria by the Municipal Institutions Act of 1854, and which has been continued and developed with the progress of the State, has resulted in the establishment of an efficient and satisfactory system of local self-government. The powers given to local bodies by the early enactments were extensive, and have from time to time been largely increased, so that they now embrace practically all matters which are included in the most advanced systems of local government in operation in the United Kingdom and other parts of the world. Two hundred and six municipalities have been constituted under the Local Government Acts, and the districts under their control, with the trifling exception of one small area of mountainous country, now extend over every portion of the State.

Briefly, the scheme of local government is as follows:—The Governor in Council is empowered, upon petition by the inhabitants of any area, to constitute it a municipal district. The district may be constituted a borough or a shire; in the former case, the area must not exceed nine square miles, and the population must contain at least five hundred inhabitant householders; in the latter case no restrictions as to area or



population are imposed. A borough, when it has a certain revenue, may be declared a town, and with a higher revenue a city. The inhabitants of each municipal district are a corporation, governed by a council elected by the ratepayers, the franchise being based upon the value of their ratable property. For the good rule and government of the municipality, the council has extensive powers for making bylaws and regulations. The funds and revenues are derived for the most part from rates which are made and levied upon the occupiers and owners of all lands according to the net annual value, which is in no case reckoned at less than 5 per cent. on the capital value. Where works are carried out for the special benefit of any particular part of a district, special rates and charges may be made upon occupiers and owners of the properties benefited by the works. Municipalities have wide powers for the construction and management of works and undertakings, as, for example, street works and tramways, bridges, ferries and jetties, drainage and sewerage works, sanitary works, waterworks, electric light and gasworks, markets and abattoirs; and they may provide baths and washhouses, pleasure grounds, libraries, museums and places of recreation, hospitals and asylums. In order to carry out permanent works and undertakings they may, if necessary, borrow moneys not exceeding in amount, in ordinary cases, ten times the average annual income for the three years preceding the loan. In addition to the foregoing powers and duties, each council is a local board of health under the Health Acts, and is charged with the administration of almost all Acts of local concern. In many matters the discretion of the municipal council is unfettered, but in others, and especially where the rights of the general public are concerned, the acts of council are subject to the control of the Governor in Council. Technically, the "Governor in Council" means the Governor with the advice of the Executive Council; in practice, the responsibility rests with the Minister of Public Works, who acts under the guidance of the permanent officers of his department.

**Factories and Shops (No. 1857). (c)**—The principal feature of this Act is the establishment of a Court of Industrial Appeals for dealing, either on appeal or on reference by the Minister, with the determinations of the Special Boards for fixing a minimum wage which have been in existence since 1896. The Court consists of a judge of the Supreme Court, who may appoint representatives of employers and employed as assessors (s. 18). Barristers, solicitors, or agents are not to be employed, except by the consent of the parties or order of the Court. By the principal Act of 1896 (s. 15 [1]), the Special Boards, in fixing the lowest price or rate for work, are to take into consideration the nature, kind, and class of the work, and the mode and manner in which the

work is to be done, and any matter which from time to time may be prescribed. By the new Act, the Special Boards and the Court in dealing with appeals or references are to have regard to the following principles: (s. 14). They are to ascertain the average prices or rates of payment paid by reputable employers to employees of average capacity. The lowest prices or rates fixed shall in no case exceed the average prices or rates as so ascertained, except upon a representation by the Special Board, followed by further consideration by the Court of Industrial Appeals. Where it appears to be just and expedient, special wages, prices, or rates may be fixed for aged, infirm, or slow workers.

The jurisdiction of the Court of Appeals includes a power to review determinations of boards prior to the Act, and in dealing with such cases the Court shall consider (s. 16) whether the determination appealed against had had or may have the effect of prejudicing the progress, maintenance, or scope of employment in the trade or industry affected, and may make such alterations as may be necessary to remove or prevent such effect, and at the same time to secure a living wage to the employees in such trade or industry. In various other ways the Act, using the experience gained since 1896, sets bounds to the operation of this class of Acts. By s. 24, no determination of a Special Board shall apply to any children of the employer; and s. 25 provides that it shall not apply to country districts except upon petition of the shire council. By s. 7 the indulgence extended to aged and infirm workers who are unable to earn the minimum wage is extended to "slow" workers, with a limitation, however, of the number of slow workers to be licensed for any factory. The proposal to make the scheme of the Act of 1896 permanent was not carried, and this Act continues the operation of that Act, as amended by subsequent Acts, including that now under notice, for a term ending December 31, 1905.

**Old-Age Pensions** (No. 1865). (*d*)—In addition to amendments of the machinery of the Principal Act of 1901, (*e*) this Act provides that unless the total sum payable for pensions during any year will not amount to £150,000, the treasurer shall not without further Parliamentary appropriation authorise the grant of new pensions involving the expenditure of an amount greater than that expended on pensions ceasing to be in force (s. 6). Any property of the pensioner vests at his death in the State, and to the extent of the total amount received by way of pensions shall be devoted to repayment of the State; and any transfer which has been made in defeasance of this right is void unless the transferee proves that he had no knowledge that the transferor

(*d*) This subject has been dealt with by Commonwealth legislation (No. 17 of 1908).

(*e*) See *supra*, pp. 97-101.

was a pensioner (s. 7). All moneys paid by way of pension to any person are on his death to be deemed a debt payable to the Crown, but with the consent of the Treasurer any debts necessarily or properly incurred by or on behalf of the pensioner may be paid out of the estate.

**Health** (No. 1866).—By this Act various amendments are made in the Health Act, 1890, and amongst other things more careful provision is required to secure cleanliness in places used for the milking or keeping of cows or the keeping of pigs; and municipal councils are empowered to order the necessary works to be carried out. S. 5 contains an interesting provision for the division of the cost of works between landlord and tenant. When the interest of the tenant has less than three years to run, the landlord bears the whole cost; where there is more than twelve years to run, the tenant bears the whole. For the intermediate terms, up to six years the landlord pays three-fourths; between six and twelve years the cost is equally divided.

**Savings Banks** (No. 1878).—This Act relates to the system of advances to farmers and other landowners by the Commissioners of Savings Banks inaugurated in 1896. The Commissioners are empowered to raise the rate of interest to 5 per cent.; the total amount which may be advanced on mortgage is raised from two to three million pounds; and the total amount of debentures which may be issued for the purpose of making advances is raised from one to two million pounds.

**Legal Practitioners' Reciprocity** (No. 1887).—This Act is more comprehensive than its title, for in addition to providing that legal practitioners admitted in any State of the Commonwealth shall be admitted to practice in Victoria, it establishes a Council of Legal Education with plenary power to make regulations concerning the qualifications for admission of barristers and solicitors. This includes a power to prescribe courses of study, and to provide for the admission of English, Irish, and Scotch "legal practitioners, howsoever styled," and thus removes the barrier imposed, probably by inadvertence rather than design, by the Act of 1891. In the case of practitioners from other States of the Commonwealth, admission is conditional upon the reciprocal admission of Victorian practitioners. The Council is to consist of the judges of the Supreme Court, the Attorney-General and Solicitor-General, and the Dean of the Faculty of Law in the University of Melbourne *ex officio*, and representatives appointed by the Council of the University of Melbourne (two), the Law Institute (three), and the Committee of Counsel (three), the last two bodies embracing members of the legal profession practising as solicitors and barristers respectively, for the distinction remains in substance, though the professions were formally amalgamated by the Act of 1891. Rules made by the Council are to be transmitted to the Governor in Council,



and are to be laid before Parliament, and come into operation, unless within one month after they have been laid before Parliament either House passes a resolution disallowing them.

**Administration and Probate** (Nos. 1 and 2: Nos. 1815 and 1862). (*f*)—These two Acts merely amend the rates of duty or tax payable by the estates of deceased persons in the State of Victoria. The duty or tax is in the nature of a succession duty; it is made a condition of the issue of a grant of probate or of letters of administration; it is deducted from the estate while it is in bulk and before the process of administration begins; it is chargeable on real and personal estate and against every legatee; and it varies in rate according to the relation of the successor to the deceased. For many years the minimum estate which in Victoria paid such duty or tax was one the net value of which exceeded £1000, and the duty ranged from £2 per cent. for such minimum, and rose until a maximum of £10 per cent. was reached on estates of and over £100,000 net value.

The desire to earn more revenue from this source caused the first of the above two Acts to be passed in the Session 1902–3, and it was an Act made to operate for the period only between December 31, 1902, and January 1, 1904. The second of these Acts extended (with very slight modifications) the provisions of the first amending Act for a further period of twelve months (December 31, 1903, to January 1, 1905).

Generalising the two above Acts, it may be said that they cause the duty or tax to fall on estates of a net value of £200 and upwards, and the duty or tax to range now from £1 per cent. for such minimum estate and to rise until the maximum of £10 per cent. is reached on estates of and over £20,000 net value. The progress from the £1 per cent. to the £10 per cent. is made more gradual and detailed than in the Principal Act; in estates which go to widows and children the progress towards the higher duty is very much slower than in the Principal Act. It starts with £1 per cent. on estates exceeding £200 in value and not exceeding £500, and it does not reach the maximum of £10 per cent. until the estate exceeds in value £100,000, and it is graduated the whole way.

**Companies.** (*g*)—The Companies Act (No. 1886) is also an amending Act. The Companies Act of 1896 contained, *inter alia*, provisions analogous to ss. 14–18 inclusive of the Imperial Act, (*h*) in relation to mortgages and charges given by a company as security, and compelling their registration as a condition of validity. In Victoria the

(*f*) See *infra*, p. 141.

(*g*) A statement of the law relating to companies may be found in a memorandum prepared for the Imperial Conference, 1907. Cd. 3589, p. 25.

(*h*) 63 & 64 Vict. c. 48.

Bills of Sale Act (the Instruments Act, 1890), and the Assignment of Book Debts Act, 1896, were two other Acts in force requiring the registration of securities in Victoria, and doubts arose under the Companies Act, 1896, whether mortgages and charges given by companies required for their validity that they should be registered under these two Acts as well as under the Companies Act. It was becoming an expensive practice to register such securities under the three Acts, though the better opinion was that registration under the Companies Act only was essential. The Act of 1903 makes plain that registration of such securities need be only under the Companies Act, 1896, and it further provides for a certificate being given upon such registration which is made evidence of all the requirements of the law being complied with.

*Life Assurance.*—By the Life Assurance Companies Act of 1873, a policy of life insurance was, to the extent of £1000, protected from seizure in any execution by any creditor, and protected likewise in the event of the insolvency or death of the policy-holder. The Victorian Supreme Court had in the case of *Davey v. Pein*, (i) held (though not unanimously) this to mean that the protection against creditors extended to any policy or policies (whatever the amount assured) the surrender or market value of which in the aggregate did not at the time of the protection arising exceed £1000. Then the Companies Act, 1900 (Life Assurance Act), protected a policy maturing only at death to an unlimited extent against the creditors of the policy-holder, and altered the previous law to this effect, and in so altering it shut out, in error, policies like endowment policies maturing before death from all such protection, though such latter policies had enjoyed the protection under the earlier law. The Companies Act, 1903, replaces life policies not maturing at death only up to £1000 in the protected position previously enjoyed by them by enacting (s. 4) that any policy of his life to the extent of £1000, not maturing only at his death, shall be protected against creditors of the policy-holder, unless his will has expressly provided to the contrary.

*Proprietary Companies.*—Very stringent clauses were contained in the Companies Act of 1896 as to the formation and management of ordinary trading companies; but the same Act exempted from such provisions the special class of trading company known in Victoria since the year 1896 as “the proprietary company limited,” which the said Act created. Such a company is in fact a trading partnership converted into a private company; its shareholders were not to exceed twenty-five in number, and being registered under the Act, the company got for its shareholders the blessing of limited liability instead of the

(i) (1885), 11 Victorian Law Reports, 446.

unlimited liability of an ordinary partnership. These companies have proved a great success and are much availed of, but experience has shown that the limit to the number of shareholders was at times not enough when the interests of the various proprietors came to be subdivided, and so this Act of 1903, by s. 5, increases the number of shareholders in such private companies from twenty-five to forty as the maximum number of shareholders therein.

**Cremation.**—The Cremation Act (No. 1876) is in no way compulsory in character in interfering with what is popularly called the right of Christian burial. It merely permits cremation and empowers the trustees of public cemeteries (except the Melbourne general cemetery and one or two others) to establish crematoria for the burning of the human remains of any person who duly expressed a desire to have his body cremated and not buried. No cremation may occur outside a cemetery except by the consent of the Board of Health. The Act makes all necessary amendments in the Cemeteries Act of 1890 for the establishment of crematoria; and it copies some of the provisions of the Imperial Act, (*k*) as, for example, to the site of crematoria not being nearer to any dwelling-house than two hundred yards, except by the consent of the owner, lessee, and occupier of such house, nor within fifty yards of any public highway, nor in any part of a cemetery set apart for any particular religious denomination (s. 6), also as to empowering the trustees of cemeteries to accept donations for crematoria (s. 7), and empowering the Governor in Council to make regulations for the management, maintenance, inspection, and use of the crematoria (s. 12), and for providing for a registry of crematoria (s. 13).

The Act provides for the registration of the crematoria and of the cremation of the persons cremated similar to that required by the law in the case of a person buried (s. 14). It requires too that the person conducting the cremation shall send a certificate thereof to the Government Statist, a register showing the name of the deceased, date and place of cremation, names (if practicable) of relatives of deceased thereat, and the name of the clergyman who officiated at any religious ceremony (s. 16). Before the cremation can take place the Act requires a certificate from a medical practitioner who personally attended the deceased, and showing that the circumstances of the death have been closely investigated by him, and that nothing is present to make any subsequent exhumation of the body necessary, and that he has independently inquired into the possibility of the death having occurred from poison or injury or illegal operation, and that no circumstances exist demanding further inquiry before the body is cremated, and further certifying to the primary and secondary cause of the death of

(*k*) 2 Edw. VII. c. 8, see *supra*, vol. i. pp. 92, 93.



the deceased, and that he (the medical practitioner) has no pecuniary interest by the death of the deceased.

**Lunacy** (No. 1873).—Since the year 1888 no new legislation upon lunacy law had been placed on the Statute roll of Victoria, and many needed reforms in administration had become necessary. This Act of 1903 aims mainly at the better administration of the lunacy law. It creates (in Division 1) in lieu of the government by a department of the Public Service a government by a Department of Lunacy effectively controlled by a single responsible officer—the Inspector-General in Lunacy. This office is created for the first time in Victoria, though such an office had been found to be most useful in the State of New South Wales. The real administration of the lunacy laws is now handed over to the Inspector-General, who is a qualified medical practitioner with a salary charged on the Consolidated Revenue of not exceeding £1500. The officer is made independent of the Public Service Acts, is appointed for five years but eligible for re-election, is made exempt from legal liability for acts done by him in the performance of his office, but is liable to suspension by the Governor in Council, who on suspension must lay before Parliament the grounds for so acting. The control of all officers in the Lunacy Department of the State is by this Act entrusted to the Inspector-General, and the control previously exercised by the Public Service Commissioner is transferred (except as to superintendents) to such officer, and he can punish and recommend dismissal by the Governor in Council without any appeal (ss. 12–14). An annual report to Parliament on the state and condition of the hospitals for the insane, and of receiving and licensed houses, and of the care and condition of the patients therein is required to be made by the Inspector-General (s. 15).

The Act creates licensed houses for the reception of one or more insane persons, and prohibits persons not so licensed from taking charge of insane persons for profit (ss. 56, 57). The Victorian Act of 1888 had discontinued private licensed houses for the insane. This Act renews them, but under very careful safeguards, for they are now to be under the same supervision as the State hospitals for the insane, and the attendants in such licensed houses are to be approved by the Inspector-General.

This renewal practically gives legal status and sanction to a number of establishments which were existent in evasion of the previous law, and every licensed house containing more than fifty patients must have a resident medical practitioner other than the licensee, whose appointment must be approved by the Inspector-General, and if such house contains over twenty-five patients it must be visited daily by a medical man other than the licensee, whose appointment must be similarly

approved. The licensee is made superintendent. A licence may be revoked on the recommendation of the Inspector-General. Further, the Act (in Division 3) creates "receiving houses" (s. 40). In the State of New South Wales receiving houses have for many years done most excellent work, and this Act adopts them for Victoria as a place for the reception of those patients about whose mental condition there may be some doubt in the minds of magistrates or doctors. The hospitals for the insane were previously put to a double purpose—as an asylum proper and also as a receiving house; but this Act makes provision in future for two different classes of institution. No person may be detained in a receiving house for more than two months. If the patient proves to be insane, the superintendent may order his transfer to some hospital for the insane; and if, on the other hand, the patient proves to be not insane, he is to be discharged. Persons who may be dealt with as of the criminal insane are not to be sent to or received in any receiving house (s. 42). If the committee of any public hospital provide a ward as a receiving ward for the reception of persons presumably insane, and for the temporary reception of insane persons, the Governor in Council may proclaim them as such (s. 49), and the provisions of the principal Act regarding maintenance orders shall then apply to all persons received into such wards.

In Division 4 the law is continued as to cottages or other separate accommodation for paying patients. When proper sufficient arrangements have been made by the Master in Lunacy in regard to the paying patient, a certificate by such Master in Lunacy entitles the patient to separate accommodation, which is provided in any cottage or other place of separate accommodation in hospitals for the insane for such class of patients, and except for such separate accommodation the paying patient is placed on the same footing as ordinary patients in regard to examinations, inspection, control, etc.

The Act adopts for Victoria the provisions of the Imperial Lunacy Act of 1890 (*l*) as to mechanical restraint—that there is to be no mechanical restraint except by order of the superintendent or medical officer of the hospital, and that where it is in fact applied, the grounds for its application shall be duly certified and a record of the case be kept from day to day. The Victorian Act adds what is lacking in the English provisions, viz. that patients may not be "secluded" except under the like authority and circumstances (s. 73). The pre-existing law as to the annual examination of patients is modified, and all patients in hospitals for the insane or in licensed houses or whilst boarded out are to be examined once at least in every twelve months during the first three years; subsequently every five years (ss. 88–90).

(*l*) 53 & 54 Vict. c. 5.

The pre-existing law as to the boarding-out of harmless patients is continued and further regulated by this Act (ss. 97-99). The inspection of patients and hospitals for the insane by official visitors appointed by the Governor in Council for the purpose is continued and further regulated by this Act, and the duties of such visitors and the books and documents to be produced to them and the reports to be made by them are fully detailed (ss. 74-85). Provision is also made for female nurses attending male patients who are certified by the superintendent to be of cleanly and unobjectionable habits (s. 17); for the appointment of a pathologist for Melbourne to make autopsies on patients dying, and also such pathological examinations (bacteriological, chemical, and microscopical) as opportunity may afford, and report quarterly thereon to the Inspector-General (s. 87); for the examination by a Court visitor at any hospital of any patient ordered to be examined by any judge of the Supreme Court, and so save trouble and give less publicity to the condition of the patient than if made at Court (s. 86); for the removal of patients from the State of Victoria to their friends outside such State by an order of the Supreme Court in cases where the friends are willing to undertake the care and charge of the patient; and for the transfer and trial leave of patients.

**Railways** (No. 1861).—Railways are State-owned in Victoria, and in recent years legislation has somewhat modified the common law right of action of a passenger for negligence in carrying him. For some years the maximum compensation recoverable in such an action has been fixed at £2000 (the Railway Act of 1891), and to limit the costs the county court is made the Court to try the action, except when a Supreme Court judge otherwise orders (the Railway Act of 1896). The present Act—the Railway Passengers' Action Act, 1903—is designed to further save costs of litigation in those cases where the only question at issue is the amount of damages. It enacts that the Railway Commissioners may within ten days of the service of process notify the plaintiff that liability is admitted and the amount of damage only is disputed (s. 2). This notification stays the action; and thereupon the plaintiff, or, in case he is physically unfit, some one in his behalf, must make a declaration setting forth the plaintiff's occupation and income for three years preceding the action; the nature of the injury, and whether permanent or not, with the grounds for believing it permanent; the amount claimed for the injury itself; the names of and the fees charged by the plaintiff's medical advisers, and the amount and nature of any other claims arising out of the injury (s. 3). The medical advisers to the plaintiff are also required to render for the purpose of such declaration a detailed and full statement of all services, operations, and fees (s. 4). Thereafter the defendant may in writing offer a sum



in settlement, and if the plaintiff accept it judgment for that amount with costs may be forthwith entered up. If, on the other hand, the plaintiff refuses the offer, the action is fought out, and no communication may be made to the jury of the offer made, and unless the plaintiff recovers more than the amount offered he pays the costs of the action. But if he does recover more than the amount offered the defendant pays the costs.

**Roads.**—The Unused Roads and Water Frontages Act (No. 1894) establishes a duty upon the occupier of unfenced land adjoining a public unused road or water frontage either to fence off his land from such road or frontage and keep the fence in repair or to apply for a licence and pay a fee therefor to occupy and use the whole or one-half of such road or frontage according as the other side of such road or frontage is fenced or not; and this duty is enforced by a penalty of £1 per day for every day the licence fee is unpaid or the fence not constructed or kept in repair (ss. 6–9). The licence is for three years, and is renewable, but it may be determined by three months' notice in writing being given by the Governor in Council.

## 1904 (*m*)

Acts passed—65.

**Conveyancing** (No. 1953). (*n*)—The provisions of the English Conveyancing Acts of 1881, (*o*) 1882, (*p*) and 1892 (*q*) have been enacted subject to certain necessary and other modifications, the principal of which are as follows:—

(*a*) The Act is not to apply to land under the operation of the Transfer of Land Act, 1890, so far as it is inconsistent with that Act.

(*b*) The parts of the English Act of 1881 relating to rent-charges (Part X.) and long terms (Part XIII.) have been omitted as of no value in this State.

(*c*) The provisions in the English Act of 1881 enabling parties to a mortgage to omit the "receiver" clauses have not been copied, probably because mortgagees in this State have not hitherto shown any disposition to avail themselves of "receiver" clauses.

The section in the Vendor and Purchaser Act (England), 1874, (*r*) providing for the determination in a summary manner of questions arising between vendors and purchasers, has been embodied in the Act (s. 10).

(*m*) Contributed by C. J. Zichy-Woinarski and W. Harrison Moore, Esqs.

(*n*) Contributed by W. Campbell Guest, Esq., author of "The Transfer of Land Act" (Victoria).

(*o*) 44 & 45 Vict. c. 41.

(*p*) 45 & 46 Vict. c. 39.

(*q*) 55 & 56 Vict. c. 13.

(*r*) 37 & 38 Vict. c. 78.

The Apportionment Act (England), 1870, (s) forms Part IV. of the Act.

The English Act of 1874, (t) making appointments valid, notwithstanding the exclusion of one or more objects, is transcribed, and appears in the Act as s. 60.

The English Acts of 1867 and 1877, (u) declaring the meaning and extending the operation of Locke King's Act, are included among the provisions of the Act (ss. 73-75).

The Contingent Remainders Act, 1877 (England), (x) preserving contingent remainders from destruction by the determination of the particular estate in certain cases, has been copied (s. 77).

An important, and it is believed entirely novel, change has been made in the law affecting a mortgagee's right to sue on the covenant. The effect of the change is that after foreclosure absolute the right of a mortgagee to sue on the covenant for the money owing ceases irrespective of whether the mortgagee is or is not still in a position to restore the mortgaged property on payment being made.

The only other "new" legislation worthy of being mentioned is (1) a provision that a direction to pay debts in a will is not of itself to operate to charge real estate with debts in exoneration of specific bequests and other personalty. This was passed to correct the effect of a decision in the local Court. (2) A section to the effect that the term "month" when used in any document is to mean calendar month unless the circumstances otherwise require.

**Carrum Advances** (No. 1912).—Although this Act deals only with a particular locality, its provisions are of some general interest as illustrating the mode of assisting those affected by unavoidable calamity. The locality was one which had been reclaimed from swamp and was being brought into cultivation. A disastrous flood, however, overwhelmed the settlement and did a vast amount of damage to struggling settlers. This is the condition of things with which the Act deals. It authorises the advance by way of loan of seed and (or) manure to enable any cultivator to cultivate his land. The advance is to be secured by mortgage of the land or by a preferential lien on the crops, and according as the security is the one or the other the advance may not exceed £50 or £30, and is to bear interest at 4 per cent.

The Government is to have priority over all other encumbrances, and no advance is in any case to be made until the mortgagee or other encumbrancer consents to this condition. There may be no distraint for rent or ejectment of any occupier whilst any crop raised from seed advanced under the Act is in the ground and not harvested. A penalty

(s) 33 & 34 Vict. c. 35.

(t) 37 & 38 Vict. c. 37.

(u) 30 & 31 Vict. c. 69 and 40 and 41 Vict. c. 34.

(x) 40 & 41 Vict. c. 33.

of £100 is imposed for using any order for seed or manure otherwise than for the purpose for which it is made, or for selling or otherwise disposing of seed or manure obtained.

**Foxes Destruction** (No. 1913) and **Wild Dogs** (No. 1908).—These Acts testify to some of the pests from which cultivators suffer. The Governor in Council and municipal councils give rewards for the destruction of foxes attested by the production of a skin, which is then duly stamped to prevent its use for the same purpose again.

**Artificial Manures** (No. 1930).—This Act makes elaborate provision for securing that artificial manures shall contain the ingredients they ought and purport to have. Every sale of such manures is to be accompanied by the vendor's certificate of ingredients, to be a warranty of the truth of the matters contained therein. Official analysts are to be appointed to see that manures are of the prescribed standard, and power is given to them to enter upon all places where such manures are kept for sale to take samples.

The Act, which extends to thirty-six sections, is evidence of the healthy and intelligent interest now being taken in agriculture throughout the State, and of the great importance which during the last few years agriculturists have come to attach to methods of fertilisation to which hitherto little attention had been paid.

**Land** (No. 1957).—This Act contains a large number of amendments in detail of the (Consolidated) Land Act, 1901. (*y*) It is arranged in four divisions—Crown Lands generally; Mallee Lands; Village Communities; General. Amongst other things it is provided that for the purpose of fulfilling the condition of occupation in occupation licences, residence on an agricultural or grazing allotment of a deceased licensee by his widow or child over eighteen years of age shall be deemed occupation within the meaning of the Act of 1901.

**Closer Settlement** (No. 1962). (*z*)—This is a very important Act, the principal feature of which is expressed in s. 5—"For the purposes of closer settlement the Board (*i.e.* the Lands Purchase and Management Board constituted by the Act) may acquire and take for the Crown either by agreement or compulsorily blocks of private land in any part of Victoria." The compulsory power is very carefully guarded—it can only be exercised after a resolution of both Houses of Parliament, an authority which, having regard to the hostility of the Legislative Council to the principle of compulsory purchase, is hardly likely to be obtained for some years at any rate. Where the compulsory power is exercised, the price may be fixed by a Compensation Court presided over by a judge of the Supreme Court as umpire. An owner is to be entitled to select and retain part of his land to the value of £10,000

(*y*) See *supra*, pp. 96, 97.

(*z*) See *infra*, p. 148.



exclusive of buildings thereon; and in any case where it is proposed to take part of his land, may insist that the whole of the estate be taken. The purchase-money for lands acquired under the Act may be paid either in cash or Government debentures or stock at the vendor's option; in any case the Government is authorised to issue stock against such purchases to an amount not exceeding £500,000 per annum in each of the five years following the passing of the Act; and this of course fixes the limit of the present experiment. The exercise of the powers under the Act is entrusted to a Board of three persons, paid by fees limited in the case of each of them to £300 per annum.

All lands acquired under the Act may be disposed of on conditional purchase leases as farm allotments or as allotments for workmen's homes, or as allotments for agricultural labourers; and the power to dispose of lands for the like purposes is extended with the consent of the Governor in Council to all unalienated and unoccupied Crown lands. The Board may clear, drain, fence, or otherwise improve any land prior to disposing of it in allotments. The value of the land to be disposed of under the Act is to be fixed at a rate sufficient to cover the cost of original acquisition of the land together with a sufficient sum added thereto to cover the cost of survey, sub-division, the price of so-much land as shall on sub-division be absorbed by roads and townships and reserves, and the cost of clearing, draining, fencing, or otherwise improving such land by the Board, and any other costs incurred incidental to the acquiring and disposing of any such land and the cost of constructing roads to facilitate the disposal of any such land (s. 41).

Farm allotments are not to exceed £1,500 in value, workmen's homes allotments £100, agricultural labourers' allotments £200. Such allotments are to be advertised; none may be granted to any person with a holding (other than of township land) over £1500 in value or so as to increase his holding above such value; and no person may hold more than one allotment under the Act. S. 47 contains interesting provisions as to what is to happen in case more than one allotment does fall into the hands of one person. The price is to be paid by purchasers on such terms as may be agreed between them and the Board, but so that the payments shall not extend over more than seventy-three half-years, and shall include interest at not less than  $4\frac{1}{2}$  per cent. on any of the purchase-money outstanding. The grants are subject to the customary conditions as to improvements; the purchaser is to reside for eight months in the year, and there may be no alienation within six years of the grant.

The conditions as to workmen's home allotments require the purchaser to erect within a year "a substantial dwelling-house of the

value of at least £50," and within two years to carry out further improvements valued at at least £25, and not more than one residence or place of business may be erected on one allotment (s. 50). In the case of an agricultural labourer's allotment, the purchaser must build a dwelling worth £30 within the first year and within the next enclose the allotment with a substantial fence (s. 51). Advances not exceeding £50, or 50 per cent. of the total cost, may be made to lessees of workmen's homes and agricultural labourers' allotments in aid of the cost of fencing the allotments and building dwelling-houses thereon. There is also power to erect (if the lessee desire it) cottages not exceeding £100 in cost, the amount thereof with 5 per cent. interest to be repaid in instalments extending over a term of not more than sixteen years. Neither of these powers may be exercised without the consent of the Governor in Council.

Small areas of land not exceeding half an acre may be sold to be used for various public purposes—"churches, public halls, butter factories, creameries, or recreation reserves."

Land required for closer settlement and not taken up within two years is to be sold by auction and the proceeds paid into the "Closer Settlement Fund." The provisions for the recovery of arrears of payments are designed to place the matter beyond political influence and to ensure that due steps will be taken for the enforcement of the payments and the prevention of the accumulation of arrears, of which in the past history of land alienation the State has had too much experience. Whenever any instalment is three months in arrear and the prescribed fine is not paid, or whenever any instalment is twelve months in arrear, the Board shall certify the fact to the Auditor-General—an officer who holds office on a similar tenure to the same official in England—and it thereupon becomes his duty to forward a certificate to the Crown Solicitor, who must take the necessary steps to recover the arrears. Finally the Minister is to lay before Parliament the annual report of the Board as to the transactions carried out under the Act.

**Municipal Endowment Reduction (No. 1920).**—An Act for further reduction for one year of the Government endowment to municipalities, to £50,000, is part of a system introduced some years ago owing to the exigencies of national finance and now maintained as a means of gradually throwing the municipalities more and more upon their own resources. The present policy is to restrict the grant to those shires which are really necessitous—where population is small, land poor, and country heavy.

**Coal and Firewood (No. 1932).**—This Act contains a number of provisions designed to prevent short-weight sales of coal and firewood,

and enables the councils of municipalities to make bylaws further regulating the matter.

**Railways Standing Committee** (No. 1899).—This Act amends the constitution of the Standing Committee to which, as a means of checking political influence, all projects for railway construction are required to be submitted. The Committee consists of six members, of whom two are members of and appointed by the Legislative Council, and four members of and appointed by the Legislative Assembly. They continue members of the Committee during the session for which they are appointed, and an amount not exceeding £800 is appropriated for their remuneration. Two provisions of the new Act are significant—(1) that no appointment of members to serve on such Committee shall be by ballot; (2) no responsible Minister of the Crown shall be a member of the Committee.

The Railways Act (No. 1946) contains no provisions of general interest, except one for carrying the proceeds of various sales of property to the "Railway Loans Repayment Fund."

**Surplus Revenue** (No. 1904).—This Act (1) sanctions an advance of £294,000 from the Trust Funds Account to cover the deficiency in the Consolidated Fund for the year 1901–2; and (2) notwithstanding anything contained in the Trust Funds Act, 1897 (an Act which requires any excess of receipts over expenditure to be devoted towards liquidating the debt of the Consolidated Revenue to the Trust Funds), appropriates any surplus of receipts over expenditure for the year 1903–4 as follows: £150,000 towards the repayment of an advance of £478,000 made to the treasurer by the Commissioners of Saving Banks; £390,000 towards the public works described in the schedule; and any further excess is to be paid into a fund, to be dealt with as Parliament may direct. This further excess, amounting to £61,000, is dealt with by Act No. 1945.

**University of Melbourne** (No. 1926).—This Act provides, in addition to the permanent endowment of £9000 per annum appropriated on the foundation of the University in 1856, an additional endowment of £11,000 per annum for ten years. Hitherto the permanent endowment has been supplemented by annual grants of varying amounts; and this system has, with the progressive reductions of the last twelve years, seriously fettered the working and embarrassed the finances of the University. The change, though not all that was hoped for, is a change for the better, in that it at any rate enables the University to see some years ahead. Parliament on its part has a natural disinclination to part with the control which an annual appropriation gives it. The new endowment is attended with conditions designed to overcome this objection, and framed by agreement of the University authorities with the Premier (Mr. Bent), and this agreement is embodied in the Act.



The Government will nominate three members of the University Council—the managing body of the University—and of these, two must be members of the Legislative Assembly and one of the Legislative Council, whose position becomes vacant if they cease to be members of Parliament. The University undertakes to provide scientific and laboratory training in mining and agriculture; to co-operate with agricultural colleges and schools of mines, and to recognise the work done there as far as is practicable; and to admit students to these courses without their having passed in the full number of subjects necessary for matriculation. To assist primary school scholars to proceed in mining and agriculture, the University will take without fee at least eighty students for a four-years' course—twenty in each year—to be nominated by the Education Department. An additional grant of £1000 is made towards evening lectures in mining, agriculture, and education. The main feature of the scheme, it will be seen, is one for connecting the University with the primary industries of the country, and checking the tendency of the educated classes to crowd the professions.

**Statistics** (No. 1905).—Under this Act the following persons are required under penalty to furnish such information as the Government Statist may require for the purposes of his duties:—officers of the public and municipal service, and of every corporation, trust, institution, board, commission, or company, as to any matters of public concern and interest connected therewith; occupiers of land, as to area, stock, crops, etc.; occupiers of factories, mines, or other establishments of productive industry or of storage, particulars in relation thereto. For the purpose of making observations or inquiries, persons authorised by the Government Statist may in the daytime and within reasonable hours enter upon any land, etc. Improper disclosure of information by statistical officers is made an offence. The Government may upon the refusal of any public body to furnish information to the Government Statist withhold from that body any sum of money which would have been payable to it by way of grant.

**Juries** (No. 1907).—This is a very short Act, and it gives power to a judge, when it is proved before him on oath or by affidavit that a juror ought to be excused from attendance “by reason of any matter of special urgency or importance,” to discharge the juror altogether, or for a limited period during the sittings of the Court. It relieves the judge from the compulsion previously upon him of fining the juror for his non-attendance even in such cases of necessity. The Act also adds to an already long list of persons exempted from liability to serve as jurors “justices of the peace if and whenever they so desire,” but it requires such justices to first notify the Revision Court to omit their names from the jurors' lists.

**Justices** (No. 1959). (*a*<sup>1</sup>)—This Act makes for reform in both the criminal and civil jurisdiction of justices of the peace. On the criminal side its object is to save expense to the State and inconvenience and trouble to witnesses, by enabling a plea of “guilty” by persons accused of indictable offences to be received by the committing magistrates (a plea not previously receivable in such cases), and the witnesses thereupon are to be relieved in such cases from an unnecessary attendance at the Court of Gaol Delivery. Unless actually required to attend, the witnesses are not further troubled in the matter, but the Act (in ss. 2–4) allows the accused person upon his trial to withdraw the plea of “guilty” that he made to the committing magistrates, and to plead “not guilty” on his arraignment, if he so pleases, and in such latter case the witnesses are notified that they will be required. Formerly, even when it was known that a prisoner meant to plead “guilty” on his arraignment, it was nevertheless necessary to have all the witnesses present at the Court of Gaol Delivery, and in some cases witnesses in Victoria had to travel great distances, involving the State in unnecessary expense and the witnesses in unnecessary trouble. With the same object in view, the saving of expense, provision is further made for the case of an accused person who pleaded “not guilty” before the committing magistrates, but who, between the time of his committal for trial and the day of trial, has made up his mind to plead “guilty” on arraignment. In such a case the accused may notify to a magistrate or to the keeper of the gaol his intention to plead “guilty,” and thereupon the witnesses previously bound in recognisances to attend are to be notified that they need not attend unless they get a further notice (s. 9).

The Act allows the accused to be bailed, notwithstanding the plea of “guilty” before the committing magistrates, in all cases except in capital cases and in charges of treason (s. 12). The criminal jurisdiction of the Courts of General Sessions of the Peace is also dealt with by this Act (s. 18). In and for every one of the six bailiwicks in Victoria there exists a Court of General Sessions of the Peace, constituted by a chairman (who is a county court judge) sitting with or without the justices of the peace in that bailiwick. This Court of General Sessions is the analogue of the Court of Quarter Sessions of the Peace in England; and it stands in the same relation to the Supreme Court of Victoria that Quarter Sessions does to the King’s Bench in England, and it has co-ordinate criminal jurisdiction with the Supreme Court to hear, determine, and adjudge all indictable offences, except those exclusively reserved for the Supreme Court. The desire to aid jurisdiction to try cases of manslaughter, abortion, etc., in Courts of General Sessions has necessitated the redefining of the criminal jurisdictions of both Courts;

(*a*<sup>1</sup>) See *infra*, p. 166.

and so in s. 18 of this Act there is found a list of eleven indictable offences exclusively triable in the Supreme Court, and, excepting only these eleven cases, the criminal jurisdiction of both Courts is co-ordinate. The cases excluded from the jurisdiction of General Sessions are—

- (i.) Treason and misprision of treason.
- (ii.) Felonies punishable with death.
- (iii.) Attempts to murder.
- (iv.) Unnatural offences.
- (v.) Offences against the King's title, prerogative, person, or Government, or against either House of Parliament.
- (vi.) Bigamy and offences against the laws relating to marriage.
- (vii.) Abduction or defilement of women or girls.
- (viii.) Composing, printing, or publishing blasphemous, seditious, or defamatory libels.
- (ix.) Unlawful combinations and conspiracies, except conspiracies or combinations to commit any offence which Courts of General Sessions have jurisdiction to try when committed by one person.
- (x.) Offences which by any Act cannot be prosecuted or tried at any Court of General Sessions.
- (xi.) Unlawfully and maliciously setting fire to any property under such circumstances as make such act a capital offence.

The Act also effects reform in the civil jurisdiction of justices, in connection with Courts of Petty Session, by adding to the already extensive and varied jurisdiction conferred on such Courts jurisdiction to hear cases arising on balance of accounts, and on accounts stated, and also claims for income tax (s. 14), and by creating for the first time for such Courts the default summons and procedure already existing in the county courts, but limiting it to claims not exceeding £50. For liquidated sums not exceeding £50 a plaintiff may now issue in a Court of Petty Sessions a special or default summons notifying the defendant that he must within a time named, and in a form supplied for the purpose with the summons served on him, notify his intention to defend the claim, or the plaintiff may sign judgment without attending in Court to prove his claim. This notice of intention to defend must be served both on the plaintiff and on the clerk of the Court, and even where it has not been served power is given to set aside on terms the order or judgment got by the plaintiff for default, and to give the defendant leave to defend the claim (s. 17).

**Licensing** (No. 1929). (a)—In Victoria a licence to sell liquor is an annual licence and by the State law the licensee is required to apply at the annual sittings of the Licensing Court in December for a renewal. In 1894 an Act provided that if he had neglected to apply for the

(a) See *infra*, p. 154.



renewal on the first day of such annual sittings but applied later, the Court might adjourn such annual sittings for the purpose only of dealing with applications made for renewals. This power worked well in all cases where the Licensing Court lasted more than one day, as would be the case where the Court sat in large centres, but if, as happened frequently in small country towns, the sittings lasted but one day, the Court could not be adjourned, and if a licensee had not applied in time his chance of a renewal was gone and the licence ended. The new Act meets this difficulty, and it enables the Governor in Council, if the Licensing Court closed its sittings on the first day, to authorise a special sitting of the Court to be held in the months of January or February to deal with applications for renewals where the licensees had failed or neglected to apply at the annual sittings, and it also enables the owner or mortgagee of licensed premises to apply for the renewal at this special sitting in case the licensee himself fails to do so. The cost of the special sitting of the Court has to be borne by the applicant, and its payment is a condition precedent to the holding of the sitting (s. 4).

The provision in the English Act (*b*) prohibiting the sale of liquor to children for consumption by any other person on or off the premises is adopted with but one alteration, viz. the age of the child is in this Act raised to sixteen years of age, whereas in England the prohibited age is under fourteen years of age.

It is remarkable that s. 3 of this Act should deal with the case of one person only and yet appear in a public Act. The section deals with what should have been the subject-matter of a private Act, for it is to enable the owner of a specific hotel, the licence to which was lost by default in applying for renewal, to apply at a special sitting of the Licensing Court to be constituted especially to deal with his case only. It seems a remarkable departure from the ordinary practice as to public Acts. The usual practice in Victoria is to make such a matter the object of a private Act when a Committee of Parliament has made inquiry into the circumstances and reported favourably upon it.

**Inebriates** (No. 1940).—Virtually this Act enables inebriates (defined as "persons who habitually use alcoholic liquors or intoxicating or narcotic drugs to excess") to be treated as insane. On application and satisfactory proof, a judge, or master in lunacy, or a police magistrate may order—

(a) That the inebriate be placed for twenty-eight days under the care of some named person in the inebriate's own house, or in that of a friend, or in a public or private hospital, or in an "institution,"

(b) 3 Ed. VII. c. 25, s. 59, see *supra*, vol. i. pp. 111-113.

*i.e.* a place licensed under the Act or established by the Government for the reception, treatment, and control of inebriates ; or

(b) That the inebriate be placed in an institution for any period not exceeding twelve months ; or

(c) That the inebriate be placed for any period not exceeding twelve months under the care of a named attendant or attendants to be under the control of the judge, etc., making the order.

Persons who may make the application on which an order may be founded are—

(a) The inebriate or any person authorised by him when sober and fully understanding the nature and effect of such authorisation, of which the authority making the order must be satisfied ; or

(b) The husband, wife, parent, brother, sister, son, or daughter of full age, or partner in business ; or

(c) A member of the police force of or above the rank of sub-inspector acting on the request in writing of a medical man in attendance on the inebriate, or on the request in writing of a relative of the inebriate, or at the instance of a justice of the peace.

No order shall be made under the Act except on the production of a medical certificate, with corroborative evidence, and after personal inspection of the inebriate. Medical certificates shall include a statement of the facts on which they are based, and no person may be committed to any institution in which the certifying practitioner or his father, brother, son, partner, or assistant is interested either as keeper or as medical attendant.

When an inebriate has thrice within twelve months been convicted of an offence of which drunkenness is a necessary part or condition, a Court of Petty Sessions (consisting of a police magistrate) may order that the inebriate be placed in an institution for twelve months, and on the order of a judge or a master in lunacy, the period of detention may be extended from time to time for periods not exceeding twelve months each. The authority making the order may order that the cost of detention and treatment should be paid out of the inebriate's property ; and the Supreme Court or any judge thereof, on proof that any inebriate the subject of an order under the Act is incapable of managing his affairs, may make such orders as may be made in the case of a lunatic under the Lunacy Acts (presumably this power lasts only during the continuance of the order). There are various subsidiary provisions, *e.g.* prohibiting the supply of intoxicants to the inebriate, prohibiting his departure from the State, providing for his arrest in case of escape, providing for the inspection of institutions under the Act, etc. The Governor in Council may establish institutions for the care of inebriates, and provide for the control and management thereof.

**Stamps** (No. 1902).—This is really a machinery Act and not one imposing new taxes or duty. It provides in s. 2 new machinery for the sale of duty stamps. The reason for such new machinery is that before the Commonwealth was established the post offices in Victoria came under the control of the State Government, and all postmasters were under a legal duty to sell duty stamps to the public, and that after the establishment of the Commonwealth, which took over the control of the State post offices, and after the passing of the Federal Post Office Act, the Commonwealth declined to allow its officers to sell these duty stamps unless some percentage and commission for their sale could be arranged for with the State. By s. 2 of this Act the Victorian Minister or Comptroller of Stamps is authorised to appoint officers of the State public service—railways, police, etc.—to sell these stamps to the public without being licensed. The section provides too for the time when the Commonwealth of the State shall have made mutual satisfactory arrangements by empowering the Minister to appoint in the future Commonwealth officers to perform the like service, which will mean a sale by postmasters as heretofore.

Again, under the principal Act of 1890, transfers, conveyances, and other such documents must be stamped on execution, and are subject to a penalty for later stamping, and when once the penalty is incurred application is necessary to the Minister to remit it, and these applications have been found very numerous in the past. At least four hundred of such applications are made monthly to the Minister, and nearly always successfully. To avoid the amount of clerical labour necessitated in such a state of the law, the Act has adopted (in s. 4) the English law, (c) allowing in the case of *ad valorem* duties the stamps to be put on, as a matter of course, at any time within one month of the execution of the document without any penalty.

The Act also alters (in s. 5) a provision in the existing law under which the Collector of Stamps must give receipts for certain duties that are payable to him by allowing him to impress upon the instrument itself the requisite stamp, and so rendering unnecessary any further receipt by him.

**Instruments** (No. 1925).—This very short but important Act was passed to destroy in the State of Victoria the effect of the judgment in England in the Gordon cheque cases. (d)

The State of Victoria adopted the English Bills of Exchange Act of 1882 (e) in the year 1883, and has now amended it by the above Act,

(c) 54 & 55 Vict. c. 39, s. 15.

(d) *Gordon v. London C. & M. Bank*, [1902] 1 K. B. 242; [1903] A. C. 240, and *Same v. Capital and Counties Bank*, *ib.*

(e) 45 & 46 Vict. c. 61.



which adopts for Victoria the Act passed at Westminster in 1906. (*f*) It will be remembered that the principal Act (s. 61) gives protection to a banker paying a cheque to order on a forged endorsement; and that in the Gordon cases it was held that a draft drawn by a branch bank on its head office did not get the protection of this section, even though a draft drawn by a bank on another bank did get it; and so s. 2 of the above Act enacts that for the purpose of s. 61 of the principal Act, a banker who carries on business at more than one place shall be deemed a separate and independent banker at each of those places.

Again, in the Gordon cheque cases the view was confirmed that the crediting of a cheque as cash before clearance deprived the banker of the protection given by s. 82 of the principal Act to collecting bankers receiving payment for a customer; and so s. 3 of the above Act now enacts in defeasance of this view that "the banker is not to lose the benefit of the said section by reason only of the fact that before receiving payment for a customer of a cheque crossed generally or specially to such banker, he has credited the account of the customer with the amount of such cheque."

## 1905 (*g*)

## Acts passed—53.

**Public Health.**—This is the subject of a number of important Acts.

*Pure Food* (No. 2010).—This Act enlarges the scope of the Health Acts in relation to the prevention of the adulteration of food and drugs, and alike in the extension of the powers of officers and the machinery of the Act generally, the law on this subject is gradually assuming in rigour the character with which we have been long acquainted in the administration of the Customs and Excise laws. An "article of food" is declared to include every article used for food or drink by man, and any article that enters into or is used in the composition or preparation of food, and also to include confectionery, spices, flavouring substances and essences.

The principal specific regulations of food are contained in ss. 24–31. S. 24 enumerates the several facts which amount to adulteration or false description in the case of "any article of food, or substance, or compound or other article," and includes amongst other things any false or misleading description on any package of the nature, quality, strength, purity, composition, origin, age or proportion of any article of food or ingredients or substances contained therein. S. 25 prescribes maximums of chemicals in wine. S. 26 prescribes the maximum standards of injurious substances, such as lead, etc., in cooking utensils

(*f*) 6 Edw. VII. c. 17, see *supra*, vol. i. p. 131.

(*g*) Contributed by C. J. Zichy-Woinarski and W. Harrison-Moore, Esqs.

or appliances used in the manufacture, preserving, and storage of food, or conducting it for sale. Ss. 27 and 28 go beyond foods. S. 27 prohibits the sale or manufacture of toys, wall-paper, decorative paper, paper serviettes, or paper used for the enclosure of food, in or upon which any paint, colour, facing, sizing, dressing, or varnish containing arsenium, or lead, or antimony, in any form or compound, or any specified substance exceeding such allowable quantity as may be prescribed by regulation (*i.e.* of the Board of Health). The same substances, and barium, are prohibited by s. 28 in regard to any textile substance or leather intended for or capable of being used in the making of human clothing. S. 29 prohibits the use in beer, in excess, of arsenic, lead, copper, strychnine, cocculus, indicous, picric acid, or any substance or compound in excess of any proportion permitted by regulation. S. 30 prohibits the sale, "to the prejudice of the public health, or to the prejudice of the purchaser," of any germicide, disinfectant, antiseptic, or preservative; and the Board of Health may absolutely prohibit the sale of any such substance—not, however, till after hearing and considering the objections of any manufacturer, etc., concerned. S. 31 requires filtered water to be used in the manufacture of aerated waters. S. 32 prescribes the conditions of liability under these sections, as well as those under the Health Acts generally; the seller or manufacturer of any article sold or made under any such prohibition is guilty of an offence unless he proves—

- (1) That, having taken all reasonable precautions, he had no reason to suspect a contravention;
- (2) that on demand by the officer he gave all information in his power as to the person from whom he obtained the articles; and
- (3) that otherwise he acted innocently.

We are reminded of the observation of Mathew, J. in *Reg. v. Justices of Kent* (*g*<sup>1</sup>), as to these administrative Statutes: "They substitute, as is the modern fashion, presumption for evidence." Of the same class is s. 37: "The onus of proof that any article of food or drug, or other article, substance or compound or animal or carcase, has not been offered for sale or sold for human consumption, shall in every case be on the defendant."

By s. 15 articles in packages are to show the true net weight or volume, and the name of the vendor, or maker, and by s. 16 the person whose name is borne on a package shall, in case of any contravention of the Act in relation thereto, be deemed, unless he prove the contrary, to have committed the contravention, and unless the contravention is shown to be due to the default of the person in whose premises the

(*g*<sup>1</sup>) (1839), 24 Q. B. D. at p. 135.

package is found, or to deterioration or other causes beyond the control of the person named on the package, shall be liable to the penalties attaching to the contravention. S. 36 prescribes the penalties under the Acts—for a first offence, not exceeding £20; for a second, not less than £5 or more than £50; and for a third offence, not less than £10 or more than £100; and where the penalty exceeds £50, if in the opinion of the Court the offence was committed by the personal act, default, or culpable negligence of the defendant, the Court may substitute imprisonment, with or without hard labour, for three months. Conviction is also attended with forfeiture of all articles affected by the taint which brings about the conviction; and the Court may direct the publication of the name of the offender, his address, and the nature of his offence, in the *Government Gazette*. On a second offence, the matter shall be published in the *Government Gazette* "for public and general information," and the Court may order that it shall be published in any newspaper (s. 39).

An interesting feature of the Act is the establishment of a Foods Standards Committee, consisting of the Chairman of the Board of Health, the Director of Agriculture, the Professors of Physiology and Chemistry in the University of Melbourne, the Medical Officer of Health in the City of Melbourne, and four other experts appointed by the Governor in Council. The function of this Committee is to advise the Board of Health in relation to the very extensive regulatory power conferred upon it by the Act.

This power extends to the prescription of food standards, the prohibition of the use of such appliances or methods in the manufacture, preparation, or conducting for sale, of foods as may be specified; and in certain cases the substances come under the control of the Board. Finally, the Board may make regulations "generally for carrying out the provisions of this Act, and for securing the cleanliness, freedom from contamination, or adulteration, of any article of food, or drug, or other article, substance, or compound, and for securing the cleanliness of receptacles, places, and vehicles used for the manufacture, preparation, storage, packing, carriage or delivery of any article of food or drug or other article, substance or compound" (s. 41).

In regard to machinery of administration, very extensive powers of entry and seizure for purposes of inspection are given to the officers administering the Act—*i.e.* the officers of the Board, of a municipal council, or authorised members of the police force. Amongst other things it is provided that when any sample of food offered for sale has been found, on analysis, to contain any substance the sale or use of which is prohibited, an officer may at all reasonable times enter upon the place where it has been manufactured, and may seize and



fasten, secure or seal, the said article of food, or substance, and the possession on the premises of such article of food or substance is deemed *prima facie* evidence that the same is kept in contravention of the Health Acts (s. 9).

By s. 11 if, in the opinion of the Chairman of the Board of Health, there is reasonable ground for suspecting that any person is in possession of, for sale or manufacture, any article of food or any drug or substance used therein in contravention of the Health Acts, he may require the production of any "books of the nature of store records, or dealing with" such articles, and may take copies thereof. The section is safeguarded by the provision that any officer divulging to strangers any information obtained by him in consequence of action taken under this section, shall be liable to a fine of £50. S. 12 gives a general power of entry on premises where an officer has reason to suspect that there is being made, or produced, or packed, kept or concealed for sale, any article of food or drug in respect of which there has been, or is, an infringement of the Acts. S. 14 deals with the obstruction or corruption of officers.

*Milk and Dairy Supervision* (No. 2011). (*h*)—Previous to the passing of this Act, the milk supply of towns and the production and marketing of cream, butter and cheese were controlled by special clauses of the Health Acts. The present Act not only supersedes former legislation, but introduces a large measure of technical education amongst the dairy farmers. While the inspectors or "supervisors" have ample powers conferred on them completely to control the industry, they are expected not only to point out to the farmer what is wrong in his methods, but also to discuss the matter with him in a friendly way, and to show him that it is to his own interests to remedy any defects. It is therefore the aim of the Act to secure pure and wholesome milk and dairy produce, and at the same time to help the farmer to make his business more profitable financially.

The Act may be administered either by the Minister of Agriculture or by the local municipal council, but in both cases the supervisors are appointed only after passing a qualifying examination, and are paid a salary of not less than £150 per annum. Veterinary inspectors are also appointed to examine any animal which the supervisors suspect to be diseased.

The duties of the supervisors are set out as follows: To become personally acquainted as far as possible with every owner of a dairy farm, dairy, or factory, and the conditions of every dairy farm, dairy, and factory in his district; to confer with or advise such owner on matters connected with his farm, animals, premises, utensils, milk and

(*h*) Contributed by Thomas Cherry, Esq., M.D., Director of Agriculture for Victoria.

dairy produce, when requested to do so, or when instructed to do so by the Minister; to inspect and examine all premises, utensils, and appurtenances, and also all animals and their food and water supply, and also all dairy produce at such dairy farm, dairy, or factory, in such manner and by such means as may be prescribed; to make such other inspection, examination, inquiry or investigation as may from time to time be directed by the Minister, and to report to the Minister the results of inspections in such form as the Minister may require, or as may be prescribed.

All dairy farms, dairies, and factories must be licensed. The annual licence fee for each dairy farm is fixed at 6*d.* per cow, and the licence is issued regularly on payment of the fee, unless the supervisor reports that the place is not in a suitable and sanitary condition. Owners must assist in carrying out the Act, and the onus of proof that any milk or dairy produce is not for sale is on the defendant. The supervisor may prohibit the use of the milk of a cow for two weeks, until the case has been reported on by a veterinary officer. In all cases of disease in animals the decision of the Minister is final and conclusive. Animals suffering from "notifiable" or "infectious" diseases must be isolated, and may be branded in a permanent manner, and every veterinary surgeon meeting with such cases in his practice must report the same. Stringent provision is made for the control of cases of infectious disease occurring among the employees of any dairy farm, dairy, or factory.

The supervisors have free access to any farm, dairy, or factory, may examine all live-stock, machinery, or utensils, may take samples of any dairy produce, water, or fodder, and may open any package either in transit or on the premises. Ample powers are given to seize any produce, and to have any defects of construction or of cleanliness put right. Any produce that has been seized must be kept, if possible, in a cool store pending the result of legal proceedings. Newly established dairy farms or factories and alterations to existing ones must fulfil such requirements as may be prescribed. The expense of necessary alterations are paid by the landlord and tenant *pro ratâ* according to the length of the lease. The tenant may deduct his share of such cost from the rent. Advances up to £20 (repayable in five years) may be made by the Minister to a farmer to enable him to effect necessary improvements.

All milk and cream purchased by a factory must be paid for on the basis of its butter-fat value, and the factory must furnish monthly returns of the quantity of milk and cream purchased, the number of suppliers, the weight of butter or cheese manufactured, and the total sum paid to the suppliers.

**Opium-smoking Prohibition (No. 2003).**—Upon lines similar to New

Zealand legislation, movements in favour of State legislation to regulate the opium traffic and to extirpate the vice of opium-smoking, have been manifested in several of the States of the Commonwealth, and the present Act hits the vice of opium-smoking in Victoria. The sections have a commendable brevity. No person shall smoke opium (s. 2). No person shall sell or deal or traffic in opium in any form suitable for smoking (s. 3). No person shall prepare or manufacture opium in any form suitable for smoking (s. 4). No person shall have in his possession, order, or disposition, opium in any form suitable for smoking (s. 5). No person shall have in his possession, order, or disposition, opium in any form which, though not suitable for smoking, may yet be made suitable, unless he holds a permit so to do, issued by the Governor in Council, who may at any time cancel the permit (s. 6). Then s. 7 sets forth particulars which a permittee must record in a book kept for the purpose, of the opium he is permitted to keep in his possession, and the purposes for which it has been used. S. 8 gives the meaning to be attributed to "possession." S. 9 enables any member of the police force who has reasonable cause to suspect there is in any house or premises any opium in contravention of the Act, and that opium is being smoked therein, to obtain from the Chief Secretary a special warrant and enter and search and carry away such opium, and to arrest all persons found therein offending against the Act, and the opium so seized is to be destroyed upon the conviction of the offender. The Act provides, in s. 10, that offenders against any of the provisions of the Act are to be liable to a penalty of not less than £10, and not more than £200, or to imprisonment, or to both. Though the Act was passed in December, 1905, its operation was postponed till May 1, 1906, to enable traders in opium with stock on hand to dispose of the same, and save the State paying any compensation for its destruction.

**Poisons** (No. 1986).—This Act amends the principal Act of 1890—No. 1125. The protection given by the principal Act to the public in requiring in the sale of poisons a conspicuous labelling of the word "Poison" upon the bottle, box, vessel, or wrapper containing the poison, and an entry in a record-book of full particulars of the sale are, by s. 3 of the amending Act, not to apply to any prescribed medicine made up from a physician's prescription, nor to homœopathic medicines except in the crude state in other tinctures or of a greater strength than the third decimal potency. All sales of medicines, however, which are for external application, and which contain poison, must fulfil the requirements of the principal Act.

In s. 4 is a list of materials and articles to which the principal Act is not to apply under certain conditions, and includes: patent medicines; photographic materials (other than cyanide of potassium);



cyanide of potassium to be used for mining purposes, if sold in quantities of not less than twenty-eight pounds; veterinary medicines; poisoned material for the destruction of vermin; fly-poison papers; and poisons by wholesale dealers in the ordinary course of wholesale dealing, where an order in writing signed by the purchaser has been given for the supply.

**Factories and Shops (No. 1975).**—This is an Act to consolidate the law relating to the supervision and regulation of factories, work-rooms, and shops, and for other purposes. In 1890 the law upon this subject was consolidated, in common with the rest of the public Statutes of Victoria; but since that time the law has been frequently amended, and some important innovations have been made, principally in the establishment of wages boards, with power to prescribe a minimum wage in certain industries. In fact, since 1896, hardly a session has passed without some amendment of the law. The consequence was that a point of law bearing upon the conduct of large numbers of citizens, and in many cases imposing on them duties of a positive kind, sanctioned by severe penalties, was becoming hardly “cognoscible.” The Act consists of one hundred and sixty-three sections, and is divided into thirteen parts, of which several are further sub-divided. It is impossible to deal here with the variety of matters which it contains, many of which—the more novel and distinctive matters—have been described in the survey of legislation of preceding years.

**Factories and Shops (No. 2008).** (i)—It is unfortunate that the Consolidation Act should be followed in the same session by another Act of thirty-four sections, in some cases amending the principal Act, and in many cases referring to and reading into it. This inconvenience, however, is mitigated by the provision of s. 351 that any reprint of the principal Act shall be in its amended form.

The new Act contains provisions designed to prevent the outbreak of fire in factories and workshops, and to facilitate means of escape by prohibiting the obstruction of passages and staircases, and requiring the provisions of appliances ready for use (ss. 5–7). S. 16 enables the awards and powers of the Special Boards for fixing wages to be extended to any trade or business which in the opinion of the Governor in Council is of the same or similar class or character as that for which the Board was appointed, and “a copy of the *Government Gazette* containing an order so extending the powers of a Special Board shall be conclusive evidence of the making of such order, and such order shall not be liable to be challenged or disputed in any Court whatever.” S. 21 deals with the hours of closing in the case of shops within “the

(i) See *supra*, p. 107, and *infra*, p. 156.

Metropolitan District," which includes the municipalities about Melbourne. These shops are required to close at 6 p.m. on four days of the week, at 1 p.m. on Wednesday or Saturday, and at 10 p.m. on Friday or Saturday. In the case of "uncooked meat shops" earlier hours are prescribed—5 p.m. on three days a week, 6 p.m. on a fourth, and 9 p.m. instead of 10 p.m. A schedule enumerates several classes of shops—bicycles, boot-repairers, dairy produce, flower, hairdressers, and pawn-brokers—whereof the closing time is 8 p.m. on four days, 1 p.m. on Wednesday or Saturday, and 8 p.m. on Wednesday or 11 p.m. on Saturday, according as the one or the other day is chosen for the half-holiday. The choice is made by the individual shopkeeper, but if the same person has more than one shop situated within a mile of each other in the Metropolitan District he must choose the same half-holiday for each. In the case of a fourth class of shops—chemists, coffee-houses, confectioners, eating-houses, fish and oyster, fruit and vegetable, restaurants, tobacconists, and booksellers and newsagents—the Governor in Council in the Metropolitan District, and the municipality in other districts, may prescribe a time for closing on all days in the week during the whole or part of the year, or on one day from 1 p.m., but only upon petition of the majority of the class of shopkeepers concerned in the municipality (ss. 20 and 25, which amend provisions of the principal Act on the subject). S. 30 repeats the provision of the principal Act prohibiting the sale of milk on Sunday after 12 noon. By s. 32 the Court of Industrial Appeals is to have power, in reviewing the awards of the Special Boards for Wages either to increase or decrease the rates of payment fixed, whether for piece or timework. S. 33 provides that, save in the class of shops mentioned above—chemists, coffee-houses, etc.—no occupier of a factory or shop shall lodge or board adult employees, or have any share in any house in which his employee boards or lodges; but, with the consent of the Chief Inspector of Factories, and subject to conditions imposed by that official, he may accept money for board or lodging from an employee.

**Education.** (k)—Three important Acts affecting education were passed through the State Parliament during the session of 1905, namely, The Amended Education Act, The Amended Public Service Act relating to State School Teachers, and The Registration of Teachers and Schools Act.

*Amended Education* (No. 2005).—This Act refers to the compulsory clause, and is designed to make the conditions of school attendance more stringent. Before the passing of this Act children between the ages of six and thirteen years were required to attend school at least

(k) Contributed by Frank Tate, Esq., I.S.O., Director of Education for Victoria.

75 per cent. of the number of school days of each quarter. In practice it was found that the beginnings of defaulting attendance were not checked efficiently, and that it was easy for a parent to neglect to send a child to school during the early part of a quarter and excuse himself to the Court by representing that the child's attendance just prior to the summons had greatly improved. Again, magistrates were inclined to deal leniently with school offences committed several months before the hearing of the case.

Under the new Act every child between the ages of six and fourteen years is required to attend school at least eight times out of ten times that the school is open in a week for instruction, at least six times when the school is open eight times in a week for instruction, and at least four times when the school is open six times in a week for instruction. (By "times" is meant "school half-days.") Under the amended law prosecutions are instituted in respect of defaulting attendance during any week or weeks.

An important change affecting Victorian primary education is the raising of the compulsory age from thirteen years to fourteen years. A change was also made with respect to the conditions under which attendance at a State school was not mandatory. It is now enacted that a child must attend a State school unless it can be shown that he is under efficient and regular instruction in some other manner, and the terms "efficient and regular" are defined in the Act as "such instruction in the subjects of the standard of education (reading, writing, arithmetic, spelling, and composition) as may be prescribed by regulations under the Education Acts," and it is further provided that children attending schools other than State schools must comply with the like conditions of attendance at those schools as are prescribed with regard to attendance at State schools.

*State School Teachers* (No. 2006).—The Act to amend the law relating to State school teachers is a most comprehensive one, and deals with the question of the classification of State teachers, with the mode of future promotions and transfers, and further provides fixed salaries for teachers, in lieu of a fixed salary, together with a proportion to be paid "by way of results."

The State teachers of Victoria are classified by a Board of Classifiers, and the Act changed the constitution of this Board from "three officers of the Education Department nominated by the Governor in Council" to "the chief inspector of schools for the time being, a teacher of the first class, elected by the classified teachers, and some person—not being an officer of the public service—to be appointed by the Governor in Council." The most important change with reference to the classification of teachers was the institution of an annual



promotion list of teachers selected by the classifiers as being the persons in each class most deserving of promotion to the next higher class. It should be pointed out that since 1885 each class of teachers has been further divided into three sub-classes, and these three sub-classes corresponded roughly to orders of merit within the class. Owing, however, to an unfortunate block in promotion, brought about by legislation in 1895, teachers in some of the largest classes had no opportunity of advancement, and from time to time the number of teachers in the first sub-class was added to. As teachers were promoted from the first class in order of seniority in the sub-class, a method of promotion by seniority was thus established, and it became impossible for the administration to recognise quickly exceptional worth shown by comparative juniors. The Act provides that the classifiers shall each year select from the first sub-class of each class the names of those teachers whom, on the ground of "approved teaching and organising ability, general conduct and interest in work, literary qualifications and length of service," they consider best entitled to promotion. The promotion list lasts for one year only, and therefore cannot become congested as did the first sub-class.

The method of transferring teachers, where such transfer did not carry promotion, had also become cumbrous and ineffective, and under the new Act additional powers are given to the Director to transfer teachers where necessary in the public interest. It is also provided that vacancies shall be thrown open to all teachers eligible for transfer in any given class, and that, other things being equal, the teacher highest on the classified roll shall be nominated to the vacancy.

As new schemes of training teachers are now being worked out in Victoria, the term "pupil teacher" is abolished, and future candidates for the teaching service are to be known during their period of training as "junior teachers." These teachers will be on probation for the full term of their apprenticeship.

Fixed salaries are provided for all teachers, and these salaries will not be subject to deductions in accordance with the result of the annual examination of the schools. In fixing these salaries, the average salary paid to the teachers of each class throughout the State was taken as the basis of computation. As annual sub-divisional promotions are provided for each class of teachers, a teacher may be refused an increase of salary because of inferior work. It is further provided that, for exceptional merit, a teacher may receive two or more increases at one time.

In the Act there are several important provisions giving the Director more discretionary power in the establishment of special schools, to be used in connection with the training of teachers.

*Registration of Teachers and Schools* (No. 1013).—By the Registration of Teachers and Schools Act a beginning has been made to bring about a very necessary correlation between the different grades of education in Victoria. Heretofore there has been practically no supervision over the establishment and carrying on of private primary and secondary schools. The best of the teachers employed in these schools were for long advocates of a system of registration in order that unqualified persons might be prevented from taking up the work of teaching. The Act provides that a Board, to be known as "The Teachers and Schools Registration Board," acting in an honorary capacity, shall be appointed by the Governor in Council. Of the persons so appointed, three shall be representative of the Education Department, four shall be representative of schools other than State schools, two shall be nominated by the Council of the University, and one shall be representative of the State-aided technical schools.

It is the duty of the Board to make and keep a register of schools and a register of teachers. It should be mentioned that the operations of the Board do not affect State schools or any school aided by the State. Registered schools are to be classified as sub-primary, primary, or secondary schools, or as schools with any two or three such departments. Neglect to register a school is a contravention of the Act. When schools are registered it is the duty of the proprietor to have legibly printed in a conspicuous place near to the main entrance to the school, the name of the school, the name of the proprietor or head-teacher of the school, and the fact that it is registered as a sub-primary or secondary school.

The Board is empowered to appoint any person to enter any building used as a school for the purpose of ascertaining whether the building is supplied with proper access, drainage, light, ventilation, and sanitary conveniences, and generally whether it is efficient for school purposes. This work will be carried out in conjunction with the State Department of Health, which will take action if any school building is reported by the Registration Board as unsuitable in any way.

All teachers in schools are to be registered either as sub-primary, primary, or secondary teachers, or as teachers of special subjects. In dealing with vested interests, it is provided that every person employed as a teacher before the passing of the Act should, if he applied for registration within a specified time, be registered without further or other proof as to qualification. The Board is empowered, with the approval of the Governor in Council, to make regulations for determining the courses of study and training and examinations entitling persons to be registered as teachers. For any contravention

of the Act a penalty of £50 may be recovered by the Registrar of the Board. The income of the Board is derived from registration fees, 5s. being the fee for the registration of a sub-primary or primary school, or teacher of a special subject, and 10s. for the registration of a secondary school or teacher.

**Water** (No. 2016). (*l*)—This is a consolidating and amending Act of far-reaching importance. In 1886 the Legislature, having in view the necessity of works for irrigation and storage of water, imposed restrictions on the use of natural waters by the inhabitants of Victoria. Since that time the necessity has become still more imperative, particularly as the tendency towards smaller holdings and intense culture has grown more marked. The present Act is, in its main features, the natural result of these changes in agricultural methods, and is a corollary to the Closer Settlement Acts. The principles of the common law as to riparian rights and the ownership of the beds and banks of streams are not suitable to Australia, where the physical and climatic conditions governing the conservation and supply of water, and the use and cultivation of land, differ so widely from those of England. Consequently, in New South Wales, the Water Rights Act of 1896 was passed, declaring the law on these subjects in that State, and the law now under consideration has, as one of its principal features, the definition of all rights in natural waters, both on the part of the Crown and of private persons.

*Rights in Natural Waters.*—The Act deals with all natural waters which form the whole or any part of the flow of any river, creek, stream, or water-course. The right to the use, flow, and control of all such waters is vested in the Crown, subject only to statutory restrictions thereon. The property in the bed and banks of any river, stream, creek, or water-course, forming the boundary of land heretofore or hereafter alienated from the Crown remains in the Crown; but the riparian owner has access to the bed and banks, and a remedy against trespassers. Diversions of water are prohibited, except under statutory sanction. Owners of riparian lands alienated from the Crown before 1886 are entitled to water for domestic and ordinary use, and for watering cattle, and for irrigation of a garden not exceeding three acres in extent, and used in connection with a dwelling; and if any such owner can show that he, or his predecessors in title, for twenty years before 1886, and up to the date of the present Act, has diverted and appropriated water for purposes other than those mentioned, he may obtain a special licence to continue such extraordinary diversion and appropriation for a further period of ten years free of charge.

*Authorities.*—The administration of the provisions of the Act dealing

(*l*) Contributed by J. T. Collins, Esq., Assistant Parliamentary Draughtsman.



with the issue and conditions of licences for diversions is placed in the hands of a Commission consisting of three Commissioners, which has numerous other duties and powers.

Under the former Water Acts there were, broadly speaking, two classes of water authorities, namely, "Irrigation and Water-supply Trusts," administering rural districts, and "Waterworks Trusts," providing a supply of water for domestic and ordinary purposes in urban districts. There were some other authorities to meet the requirements of special localities, which need not be further described. The Act does not materially affect the majority of the "Waterworks Trusts." But the "Irrigation and Water-supply Trusts" have been abolished, and are replaced by the Commission before referred to. This Commission acts throughout the State, and deals, as a central authority, with all the matters concerning irrigation and water-supply, which were formerly within the local jurisdiction of the Irrigation Trusts. The Commission has all the powers conferred upon authorities in general under the Act; and, in addition, it acts for the Crown in preventing interferences with the supply and flow of natural waters; it has special powers with regard to the supply of water from State works. It does not, however, construct any works of supply. These are constructed by the State, and are vested in the Commission on completion.

*Rates and Charges.*—The Commission is required to prepare for each district under its control a register of lands, containing a description thereof, and a classification of the lands according to the suitability of the soil for irrigated culture. This register forms the basis of the apportionment of water rights for irrigation, and for fixing the amount of the "irrigation charge." This charge is levied upon the occupiers or owners of all lands, to which water rights for irrigation have been apportioned. It is graduated in amount according to the classification of the lands, and in the highest class may be equal to one-fifth of the net annual value of the lands.

Before supplying water for irrigation, a supply for domestic and ordinary use is first provided; and for this a general water rate of so much in the pound of the net annual value is made and levied by the Commission.

In districts under the control of Waterworks Trusts and other authorities which do not supply water for irrigation, the water rate is also fixed on the last-mentioned basis.

All authorities may supply water in quantities by agreement, for specified purposes, and make a charge for such supply.

*Other Provisions.*—The foregoing are the most important of the innovations in the present Act. The Act contains three hundred and seventy-seven sections, and makes provision in detail for the complex

machinery required for its administration by the several authorities upon which it imposes duties and confers powers, as well as for the rights and liabilities of these authorities *inter se*. These enactments, however, are not here specified, since they are substantially the same as in the earlier Acts, though they have been amended in many matters of administrative detail.

**Probate Charges (No. 1970).**—This is an Act amending the Probate Charges Act of 1903. (*m*) The earlier Act was passed to reduce legal charges for obtaining probate and letters of administration, and it provided scale fees. Where an estate was under £600 the charge for obtaining probate was fixed at £6; for every additional £100, or part of £100, up to £1500, a further charge of 10s. was fixed, and thereafter for every additional £500, or part of £500, up to £5000, a further charge of 10s. was fixed. In letters of administration the scale was a little higher, because generally more legal work is necessary. The Act also made provision that where special or unusual work in obtaining probate or administration had been done, the legal practitioner could claim extra costs therefor, and that the taxing officer should tax the bill of charges. A State decision in the Supreme Court interpreted this to mean that where there was special and unusual work done, and extra costs charged, the whole bill had to be taxed, and the amount fixed for costs according to the scale was to be disregarded in any such case. The new Act makes plain that in any case where extra costs are rendered necessary, the taxation is to be only as to such extra costs, and the scale charges are still to remain. This Act further alters the scale to a fee of £4 where the estate does not exceed £400, and to a fee of £5 where the estate does not exceed £500. It fixes, too, the maximum fee at £5000, no matter what the value of the estate may be; that is, the fee will be no higher if an estate is £50,000 than if it had been but £5000.

**Administration and Probate Duties (No. 1984).**—This Act continues for a further period of twelve months (December 31, 1905, to January 1, 1907) the increased duty or tax payable by the estates of deceased persons, and first imposed by the Administration and Probate Duties Act, 1903. (*n*)

**Friendly Societies (No. 1967).** (*n*<sup>1</sup>)—The preamble to this Act recites the expediency of making "better provision for the safe keeping of any bonds or debentures representing and part of the funds of registered friendly societies or their branches, and for the protection of the trustees of the said societies and branches in respect of all bonds or debentures held by said trustees," and the Act introduces a mode whereby such bonds and debentures become non-transferable. A note

(*m*) See *supra*, p. 110.

(*n*) See *supra*, p. 110.

(*n*<sup>1</sup>) See *infra*, p. 169.

of ownership is written on the face of the bond or debenture, and is signed by any trustee of the society, or of any of its branches, whereupon the bond or debenture ceases to be transferable, and the principal money represented by it (though not the interest coupons) can be paid only to the trustees (ss. 3 and 4). This note of ownership may be at any time cancelled by a cancellation note signed by the trustees of the friendly society, and thereupon the bond or debenture again becomes transferable and passes by delivery as fully as if the note of ownership had never been endorsed upon it. The Act will save such societies the expense previously incurred in having bonds and debentures taken charge of by banks for safe custody.

**Secret Commissions Prohibition (No. 1974).**—This measure embodies the chief provisions of the Bill framed by the late Lord Russell which has become law to prohibit the giving or receiving corruptly of commissions. The new features in it are that its prohibitions apply to trustees, executors, administrators, and liquidators, as well as to agents, and also to secret commissions given in return for advice to influence the making of a contract with a third person on the appointment of a trustee; that the Attorney-General must give a consent to a prosecution being initiated; that in a prosecution evidence of a custom of trade is admissible, but is not a defence; that a prosecution is to be initiated within two years after the commission of the offence, or six months after the principal or the person advised discovered the offence, whichever first happens, and that in a trifling or technical case the Court need not proceed to a conviction, but may withdraw the charge from the jury. The provisions of the Act, in outline, are: That the receipt or solicitation of a secret commission by an agent, or the gift or offer of a secret commission to an agent, is a misdemeanour (s. 2); that gifts to the parent, wife, child, partner, or employee of the agent are deemed to be gifts to the agent and received by him until the contrary is proved (s. 3); that to give to an agent, or for the agent to receive, or use, or to give to his principal, false or misleading receipts or accounts, is a misdemeanour (s. 4); that to give or receive a secret commission in return for advice, given to influence the person advised to enter into a contract with a third person or to appoint or take part in the appointment of any third person or a trustee, or to offer or solicit a secret commission in return for such advice, is a misdemeanour (s. 5); that to offer or give a secret commission to a trustee to appoint, or authorise the appointment, of some one in his stead as trustee, is a misdemeanour (s. 6); that the Act is to apply to aiders and abettors (s. 7); that directors, managers, and officers of a company taking part in any prohibited Act are to be guilty (s. 8); that the penalty is, in the case of a corporation, to be not exceeding £500, and in the case of



a person the like penalty, *and, or*, imprisonment for two years, and to repay the amount of the secret commission (s. 9); that the Court may order the withdrawal from the jury of any trifling or technical offence against the Act (s. 10); that a witness shall not refuse to answer any question which may criminate him, but is to be protected from a prosecution and entitled to receive a certificate to protect him when he has truly answered all questions required by him, and any proceedings against him may then be stayed (ss. 11 and 12); that a custom in any trade or calling to pay such secret commission is of itself to be no defence to a prosecution (s. 13); that the burden of proof that a gift received is not a secret commission is to rest on the accused (s. 14); the limit of time for a prosecution (s. 15); the consent of the Attorney-General to the prosecution (s. 16); that the information for an offence under the Act is to be upon oath (s. 17); and lastly the interpretation, extending term "agent" to trustee, executor, administrator, and liquidator, and defining the other terms used (s. 18).

**Land (No. 1991).**—In s. 2 of this Act a power is given to the Minister of Lands (not given in the principal Act of 1901)(*o*) to modify or dispense with any of the conditions upon which swamp and reclaimed lands are leased or sold. The principal Act of 1901 requires the lessee or purchaser to expend in each of the first three years of his occupation of such lands a sum of not less than 10s. per acre in permanent improvements, and this was felt to be too onerous a condition to be observed in all cases, and the Minister may now modify or dispense with this condition in any particular case.

In s. 6 of this Act a further alteration is made in the principal Act of 1901, in regard to settlers on Crown lands: for under the principal Act the value of the land selected is paid for by instalments, and no interest is charged to the selector on the deferred instalment, but now, in regard to the more valuable land, say land resumed by the Crown, and of a higher value than £3 per acre, the new settlers will be charged  $4\frac{1}{2}$  per cent. per annum on the deferred instalments of their purchase-money, just as if it were a sale out-and-out between private individuals.

Ss. 9–12 deal with the position of a licensee of a bee-farm site grantable over Crown lands already leased out to lessees under the principal Act of 1901. The bee farmer is given full right of ingress, egress, and regress over the land to which his licence extends, but by the shortest practicable route between his bee farm and any public road, and with a duty upon him to close gates and slip-panels used by him under penalty for breach of such duty of £5, recoverable in any Court of petty sessions. His bee-farm licence is subjected to the following conditions: it is annual, and an annual fee has to be paid; it is

(*o*) See *supra*, p. 96.

renewable from year to year, for a period of seven years; it may be cancelled at any time by the Minister administering the Act; no careless use of fire is to be permitted; no dog is to be kept on the bee farm; no sub-letting is to be made without the consent of the said Minister; no fences are to be erected except as the boundary of the bee farm and as approved; and the bee farmer is to erect, at his own risk, any building or improvements, and to remove them at the request of the said Minister and without any right to receive compensation therefor. The lessee of the Crown land over which the bee farmer has a licence may himself keep as many as ten hives of bees, without the necessity of taking out any licence therefor.

Lastly, this Act deals with bee-range areas. Land available for being licensed for such areas may be proclaimed by the Governor in Council. A bee-range on a licence will confer on the licensee a right to the use by his bees of any trees within one mile of the site of the apiary of the licensee, but gives no right to the licensee to enter or remain on the land over the trees of which the bees have the use, and the actual lessee of such land is not to ring, bark, or destroy any timber on any land within a bee-range area without one month's previous notice to the licensee of the bee-range area or the sanction of the Board of Lands and Works. The licence is an annual one, for which not less than one halfpenny per acre is to be chargeable, and it may be renewed from year to year for a period of seven years by the Minister, or it may be cancelled at any time by the same authority. There is a restriction placed on the transfer of such bee-range areas, and no bee-range area is to be within two miles of the site of any other such area, and no licensee can hold more than thirty such areas.

**The Registration of Deeds (No. 1966).**—In the registration of deeds relating to realty in Victoria the Real Property Act, 1890, s. 185, required a written memorial to be made, with particulars of the deed, and to be signed by one of the parties to the deed, and such memorial to be verified and registered. The practice of conveyances was to prepare the deed or conveyance, engross it and make it ready for signature, and to prepare at the same time a memorial and make it ready for signature. The parties then appended their signatures to the deed, and the memorial was then placed before the parties, and one of them signed it, in blank so far as the date of the deed and the name of the witness were concerned, and the person verifying the memorial filled in any such blanks as well as making any necessary corrections, so that the memorial agreed with the deed. This practice was declared, in the case of *Darbyshire v. Darbyshire (p)*, to give perfect registration, and it was held that a deed was not properly registered

in law if the memorial of it at the time it had been signed by the party to the deed did not contain the day and month of the execution of the deed, or the name of the attesting witness, though such particulars were inserted before registration. Upon appeal to the High Court of Australia this decision was reversed. (q) In the meantime the Act in question was passed, declaring that a memorial may be completed after signature, and that a deed is not to be deemed imperfectly registered by reason only that after the memorial was signed corrections necessary to make the same agree with the deed were made, or particulars were filled in before verification (s. 2). The particular action of *Darbyshire v. Darbyshire* (*supra*) was not to be affected (s. 3).

**South African Contingents Pensions** (No. 1997).—This Act provides pensions, temporary or permanent, for a number of disabled members of Victorian Contingents, and for the widows or other dependents of men who died in South Africa. The Act provides that no pension shall continue to be paid to a widow or other relatives whose private means or circumstances are, in the opinion of the Governor in Council, such that they do not need assistance. A widow's pension ceases on remarriage; pensions payable in respect of sons terminate at sixteen, of daughters at eighteen or marriage. Pensions are protected against the claims of creditors.

**Municipal Grounds** (No. 1972).—Municipalities are permitted by bylaw or regulation to impose a charge upon clubs, associations, or persons for the use of pleasure-grounds provided or controlled by the municipality, provided that the consent of the Governor in Council has been obtained, and that the same authority may at any time amend such bylaw or regulation. No charge may be imposed wherever that would be contrary to the terms of any gift or grant to the municipality; and all money derived from these charges is to be devoted to the maintenance and improvement of the public places in question, including the provision of musical performances.

**Melbourne and Geelong Married Women's Municipal Franchise** (No. 1989).—The Act removes the disability of coverture in respect to voting at municipal elections in the City of Melbourne and town of Geelong, the two oldest municipalities in the State, whose constitution is governed by special laws. In the case of municipalities which come under the Local Government Act, the disability was removed many years ago.

**St. Kilda and Brighton Electric Street Railway** (No. 1973).—This Act is notable as establishing the first electric railway in the State. The line is constructed and worked in connection with the State railways; but the municipalities through whose district the line runs

(q) 2 C. L. R. 787.



were required to give a guarantee for the interest for twenty years at  $4\frac{1}{2}$  per cent. on the money expended in (1) the purchase of land; (2) compensation to persons injuriously affected; (3) the cost of construction. Any enhanced value of Government lands in the vicinity of the railway is to be set off against the cost of construction.

**Victorian Railways, Motors** (No. 1983).—The Railway Commissioners may, with the consent of the Governor in Council, provide motor-cars as “feeders” to the railway in any part of their system. The Local Government Laws, or the laws relating to carriages, are not to apply to these motors, but the Commissioners are to pay to the municipality the fee that would have been payable if the vehicles had been licensed as hackney carriages, and the motors are to be subject to any law in force in relation to motor carriages, unless it be otherwise expressly provided.

## 1906 (r)

Acts passed—59.

**Constitution** (No. 2075).—This Act repeals the separate representation of public and railway servants of the State provided for in the Act of 1903, (s) and these officers now resume their place in their appropriate electoral districts. It is enacted, however, that “in order that they may be enabled to render efficient and loyal service to the State,” no officer may take any part whatsoever in Parliamentary relations or in the politics of the State, otherwise than by recording a vote; and no person or class of persons so employed may use or attempt to use any influence in respect to any matter affecting the remuneration or position in the public service of himself or any other person under various penalties culminating in dismissal.

**Public Meetings** (No. 2047).—An Act “for the prevention of disorderly conduct at public meetings.” Disturbers of public meetings, including persons using there any threatening, abusive, or insulting words, are liable on conviction to a penalty not exceeding £5, or imprisonment for one month. The chairman may direct the removal of any such disturber, and any police constable who is present shall execute his order.

**Small Improved Holdings** (No. 2053).—The purpose of this important Act is declared in its preamble:—

Whereas it is desirable to assist deserving persons to acquire small improved holdings in rural districts and as close as possible to centres of population where industrial employment may be obtained by them, to enable them to provide homes for their families and profitably use their time when

(r) Contributed by C. J. Zichy-Woinarski and W. Harrison Moore, Esqs.

(s) See *supra*, p. 104.

out of employment; and also to add to the wage-earning portion of the community and increase the number of producers and quicken thereby the development of our natural resources.

The Act enables the Government to acquire land for allotments valued at not more than £200 each, and to expend thereon in building and improving and for necessary materials, implements, and stock, not more than £150 (ss. 7, 8). A "probationary tenant" may then be admitted to permissive occupancy on showing that he is prepared by himself or with the aid of his family to cultivate and work the land; that he is unable by his own means to acquire land suitable to his requirements; that he has not during the preceding three years been convicted of habitual drunkenness, larceny, or any indictable offence; and on condition that he will transfer to the Minister any property of which he is possessed, to be sold and applied at the discretion of the Minister towards the advances made to the tenant under this Act (s. 10).

The probationer may be employed on his holding under the direction of a competent foreman appointed by the Government and may be paid a wage for his services not exceeding 20s. a week during the first six months, 15s. during the second six months, and 10s. during the third six months, subject to a deduction of 5 per cent. on the value of the holding and of the amount advanced thereon (s. 11). If a tenant disregards the instructions of the foreman or the provisions of the Act, the foreman is to report to the Minister. The foreman's duties are (1) to instruct probationary tenants (i.) as to what produce they ought to cultivate, and (ii.) how to cultivate; (2) to supervise their work and see that it is properly carried out; and (3) to recommend to the Minister what materials, implements, or livestock should be supplied to probationary tenants and to assist in selecting the same (s. 16). At the end of six or eighteen months, a conditional purchase lease may be granted to the probationer, whereby the tenant amongst other things covenants to repay the value of the land and the money expended thereon in sixty-three half-yearly instalments at the most, the amount spent on buildings and fences in thirty-two half-yearly instalments, and the amount spent on implements and livestock in six half-yearly instalments, in each case with interest at 5 per cent. (s. 18).

Amongst the other conditions are residence, non-alienation within six years, and non-division in case of death; and no allotment may be held by any person who is the holder of other land of the value of £150, or who holds any other grant under this Act. The land is liable to forfeiture in case of failure to pay instalments due thereon, and the property in all materials, etc., is deemed to remain in the Crown until the advances in respect thereof are repaid. There is also

a condition affirming the right to resume the land for public purposes on payment of the actual cost of removing and re-erecting any improvements with any consequent depreciation, the amount of loss sustained in consequence of the relinquishment of improvements not removable, and the portion of principal repaid; but no compensation shall be payable for severance or for any person's interest in the lease (s. 19 [15]). By s. 29 no licence or club certificate for the sale of intoxicating liquor shall be granted within the boundaries of any allotment. The funds for the purposes of the Act are provided for by a power to raise £450,000 over a period of three years and by all repayments which are made on account of the Act, to be called "The Small Holdings Fund."

**Closer Settlement** (No. 2067). (*t*)—The most striking provision of this Act is one designed to assist immigrants. It provides that the Government may allot lands to be taken up on conditional purchase lease solely by applicants in or from Great Britain or Ireland or any other country, and applications for such land may be lodged with the Agent-General in London or other person whom the Government may appoint. The person appointed may on receiving the prescribed payment issue a permit entitling the applicant to enter into immediate occupation of the land. Other provisions of the Act allow the Closer Settlement Board to erect dwelling-houses and other buildings on the lands acquired by them and to charge the cost of the same upon the lessee's interest in the land.

**Fruit Cases** (No. 2059).—This Act has the double object of regulating the character and size of fruit cases for export of fruit and of requiring that old cases shall not be used for this purpose.

**Lotteries, Gaming and Betting** (No. 2055).—The four divisions of this Act deal respectively with lotteries, gaming, street betting, and restrictions on race meetings, and their general character is to strengthen the existing law by increasing the power of the executive, facilitating the proof of offences, and dealing with the subsidiary or auxiliary acts connected with the several substantive offences. In connection with lotteries, the advertising in whatever form of lotteries or printing of lottery tickets, or selling newspapers containing an advertisement of a lottery to be held in Australia, or forwarding packets or parcels to lottery promoters, is made an offence; and in proceedings against lottery promoters "it shall in default of other evidence be sufficient to support the information to show" that the alleged lottery ticket was bought or accepted in the belief that it gave a right to the holder to have an interest in the lottery (s. 9). In respect to gaming, the word "place" in the Police Offences Act is defined to mean "any

(*t*) See *supra*, p. 118, and *infra*, p. 156.



place whatsoever whether within a building or not, whether upon land or water, whether defined as to area or not, and whether private property or otherwise." Any place used principally for betting or gaming, or settling betting and gaming debts (including clubs of this nature), is a "common gaming house," but the mere fact of persons betting on a racecourse is not to make it or any part of it a common gaming house (ss. 15 and 16).

The Act also prohibits the publication of advertisements (including tipsters' advertisements) in newspapers relating to betting or horse-races, or any notification as to betting odds or as to totalisators or any unlawful game (ss. 21 and 22). Any house where a totalisator is used is a common gaming house, and all acts incidental to totalisator betting—acting as agent, dealing in tickets, etc.—are made offences. Stringent provisions are made as to "common gaming houses." Any person using, or any owner, etc., suffering the use of premises for a common gaming house (which includes any place in which unlawful games are carried on) is guilty of an offence; an owner may evict any tenant so using premises; and every person found in such place without lawful excuse is liable to a fine of £5. Ss. 38-46 provide for the "quarantining" of such houses and of any place allowed to be used as a means of access or exit, on the order of a Supreme Court judge made on the affidavit of any officer of police not below the rank of sub-inspector; and thereupon all persons found therein, or entering or leaving, may be arrested without warrant and brought before a Court of Petty Sessions. No business of any kind may be carried on in the place while the order remains in force.

Premises adjoining a gaming house used by permission for access or exit may be entered by the police "whether by breaking open doors or otherwise," on special warrant.

In regard to street-betting, the police may arrest any person so engaged without warrant; minimum terms of imprisonment are imposed for various offences established by the Street Betting Suppression Act, 1896.

The fourth division of the Act provides that all racecourses shall be licensed and the licence shall define the number of meetings that may be held thereon, the maximum in any year not to exceed sixteen days in the neighbourhood of Melbourne, or twelve days elsewhere for horse-races, and for pony-races sixteen days (or, if there are more than three courses, the quotient of forty-eight divided by the number of such courses) about Melbourne, and four days elsewhere.

The fee for licences is payable to the Government and is fixed at 3 per cent. on the gross revenue in all cases where that revenue exceeds £1500; 2 per cent. between £600 and £1500; below £600, no percentage

but only a licence fee of £1. The number of licences for racecourses within forty miles of Melbourne, or within twenty miles of Ballarat or Bendigo, is not to exceed the number of racecourses in use within the twelve months next preceding August 1, 1906.

In a great many cases, the Act declares what shall be *primá facie* or sufficient evidence and throws upon the défendant the burden of rebutting it. Offences under the Act, unless it is specifically otherwise provided, are subject for a first offence to a fine of not less than £5 and not exceeding £100, or to imprisonment for not less than seven days or more than three months; and for a second offence to a fine of not less than £25 or more than £200, or imprisonment for not less than one month or more than six months; while for subsequent offences the offender must be imprisoned for not less than three or more than twelve months.

**The Widows' and Young Children's Maintenance Act (No. 2074).—**This Act empowers the Supreme Court to grant maintenance out of a man's estate for his widow and young children whenever he has by his will so disposed of his estate as to leave his widow and young children without sufficient means for their support. Male children over eighteen years of age, or female children over twenty years of age or married, are not within the benefits of the Act (s. 2).

The application to the Court is by summons which has to be served on the executor of the will of the deceased person, and the application must be made within six months of the date of the grant of probate (ss. 3, 4, 11).

The Court at the hearing of the summons may examine the widow and other witnesses, and may require from the executors full particulars of the deceased person's estate, and in fixing the amount of any provision it may make, the Court must have regard to the net value only of the estate in question and also to any independent means of support possessed by the widow and children (ss. 6, 7). No provision for a widow may exceed the sum of £1000 per annum, or be more than the income or interest on such portion of the estate of the deceased as the widow would have been entitled to upon the intestacy of the deceased (s. 9 [2]).

Any application may be refused by the Court if it be of opinion that the character or conduct of the applicant disentitles him or her to the benefit of the Act, or on the other hand conditions or restrictions may be imposed by the Court in any grant it may make (s. 8).

The burden of any grant the Court may make is borne by the testator's beneficiaries in proportion to the values of their respective interests, and the grant itself is to operate as if it had been a codicil to his will executed by the testator.

**Marriage (No. 2062).**—By this Act decrees *nisi* for divorce became absolute by entry by the Prothonotary without application from the petitioner, unless the petitioner directs otherwise, in which case the decree is discharged. Provision is made for notice to the respondent, and for search at the Prothonotary's office and for the issue of certificates that the decree has been made absolute or discharged.

**Children's Court (No. 2058).**—This Act provides that children under the age of seventeen years charged with any offence against law or with being "neglected children"—the latter the measure taken to make a child a ward of the State—shall not be brought before a Court of Petty Sessions but before a Children's Court. These Courts are composed of such magistrates as the Governor in Council may determine. They sit apart from the ordinary Court of Petty Sessions, and their proceedings are not in public. They have the ordinary power of a Court of Petty Sessions, but in addition they may release children on probation, or order the child to pay damages, or adjudge it to be a neglected child. Probation officers are attached to every Court, and it is their duty to investigate the circumstances of any charge against a child, to inform the Court generally as to the child's conduct and mode of living (s. 9), and generally to supervise the conduct of any child committed to their care by the Court, and in this last capacity the officer has the powers of a peace officer and may bring the child before the Court for any misconduct (s. 10). There are important provisions intended to secure the responsibility of parents, who may be ordered to pay damages and costs wherever their neglect has contributed to the child's misconduct, as well as to enter into recognisances for the future good behaviour of the child (ss. 21, 22). The provisions of the Neglected Children's Act, 1890, are extended to children under the age of sixteen living in a brothel or associating with a prostitute, whether the mother of the child or not. In the case of boys under the age of sixteen years the Court may discharge the accused upon being satisfied that the parent has carried out an undertaking to inflict privately a "whipping with a cane or birch rod" (s. 25). Careful provision is made that children awaiting trial shall not be detained in prison, and if this is unavoidable they must be kept apart from all other prisoners (s. 18). Finally, the Children's Court is to be "guided by the real justice of the case without regard to legal forms and ceremonies."

**Juvenile Smoking Prevention (No. 2028).**—This Act makes it unlawful to supply tobacco or any smoking materials to children under the age of sixteen years. In the case of tobacconists, a third conviction will lead to the loss of his licence for a period of five years.

**Lifts Regulation (No. 2048).**—This Act requires owners, lessees, and



occupiers to give notice of any lift in use in a building to the Chief Inspector of Factories. These lifts and all lifts hereafter constructed are from time to time to be inspected, and the inspector may order them to be closed, altered, or repaired as appears necessary to ensure their safety, subject to an appeal to the Inspector-General of Public Works; and the Governor in Council may make regulations generally concerning the construction, inspection, and working of lifts. No lift shall be worked or taken charge of by any person under the age of eighteen years.

**The Unclaimed Moneys Act (No. 2051).**—In both New Zealand and South Australia a legal obligation has for many years been put upon public companies and banks in whose hands are unclaimed moneys to give publicity to information relating to such moneys and to pay them over to a superior guardian—the State itself—which safeguards the moneys, invests them and receives the interest from their investment until the moneys are either claimed by their owners or revert to the Consolidated Revenue.

The above Act is based upon a like principle, and it is an Act far more comprehensive than any existing Victorian law. In Victoria since 1898, bankers have been required to furnish annually a list to the Curator of Intestate Estates of the current accounts opened since 1894 and not operated upon for a period of five years, and also of moneys deposited since 1894 and which are at least five years overdue and unpaid. Similarly all Victorian trustee and executor companies have been required to pay the Receiver of Revenue all unclaimed moneys which are in their hands unclaimed for a period of five years after the same became payable; and these moneys the State Treasurer invests, and for six years thereafter claimants may apply to the Supreme Court for payment. Similarly under the insolvency law all unclaimed dividends in insolvent estates are required to be paid by trustees and assignees in insolvency into the Government Treasury to a fund called the “Insolvency Unclaimed Dividend Fund.” None of these provisions are affected by the new Act (s. 11). All bankers, all trading companies, building societies, and friendly societies are within the new measure and equally bound in respect to unclaimed moneys in their hands. The Act limits such moneys to moneys “which shall have become legally payable to the owner since January, 1900, and not before, or which shall at any time after that date become payable to him, but the recovery whereof has been or may be barred by operation of law” (s. 2).

A register of such moneys has to be kept in a certain form, and is to be open for public inspection and to be made up annually, and a copy of such register has to be advertised annually in the *Government*

*Gazette*. If for one year after such advertisement the money remains unclaimed, it is then required to be paid over to a Receiver of Revenue to a fund called the "Unclaimed Moneys Fund" (ss. 4-6).

Any lawful claimant of the fund may thereafter make claim to the money, and if he satisfies the Treasurer that he is owner of it, the Treasurer may direct payment to be made to him out of such fund (s. 9), and the Treasurer is not to be held responsible if after making such payment some other claimant makes claim for the same money; but the latter claimant is to have recourse to the first claimant (s. 10).

**The Vacant Unclaimed Lands Act (No. 2056).**—A preamble to this Act sets forth its *raison d'être*—

Whereas there are in the possession and under the control of the Crown certain undelivered Crown grants under the general law, sealed and dated before the commencement of the Real Property Act of 1862, No. 140, on which the fee chargeable on delivery has not been paid; also certain grants of title from the Crown prepared for registration more than thirty years ago on which the fee for registration and the contribution to the Assurance Fund chargeable under the said Real Property Act and the Transfer of Land Act of 1866, No. 301, respectively, have not been paid, and they remain unregistered and incomplete titles: And whereas the persons named as grantees in such grants have not nor has any one on their behalf made any claim to the Crown in respect of the said grants or lands comprised therein: And whereas land comprised in many of such grants is vacant, unimproved and unproductive, and it is expedient in the interest of the public that it should not continue so.

The Act then deals with such lands, authorising the Crown to sell them after due notice has been given in the *Government Gazette* (s. 3). The proceeds of the sale are devoted, in the first instance, to paying the costs, charges, and expenses of the sale, and in the second place to paying any municipal, water, or other rates with which the land is chargeable, and the balance then remaining is to be paid into the Trust Funds to an account in the names of the Minister of Lands and of the original grantee of the land (s. 4).

The original grantee of the land, or any person claiming through him, may at any time within three years thereafter petition the Supreme Court for an order to have such balance in such account paid to him as sufficient proof of title, and the Court may make such order, but at the end of three years from the time of sale, if no such claim is made, the moneys become the property of the Crown, and are then paid into the Treasury out of such account (ss. 5, 6).

Provision is made, too, for any claim being set up to the land prior to the date of the advertised sale, and machinery is provided whereby such claimant may upon satisfactory proof obtain delivery of the Crown

grant or registration of the grant as the case may be (ss. 7-9). The Governor in Council is authorised to make regulations for the carrying out of the provisions of the Act, and a schedule of fees is also provided.

**Licensing (u)** (No. 2068). (x)—The main features of the Licensing Act are the extensions of many of the provisions for the regulation of licensed premises to clubs, and the introduction of a new tribunal and procedure for closing licensed houses. Generally, with regard to clubs, the powers of entry and inspection given to the police, and regulation of the supply of liquor in licensed premises, are made applicable; but the Licensing Court is empowered to exempt any registered club formed before the date of the Act from the operation of these sections. This, in fact, has been done in the case of all reputable clubs, which have applied for exemptions.

The other new feature is contained in Division III., which repeals the local option sections of the principal Act of 1890. A body known as the "Licences Reduction Board," composed of three members, is appointed, the chief duty of which is to close licensed premises in every district where the statutory numbers—fixed by the principal Act on the basis of the number of ratepayers—are exceeded. A fund called the "Compensation Fund" has been created, consisting of an amount of 3 per cent. paid annually by every licensee, and contributed to the extent of two-thirds by the owner, upon the amount of liquor purchased by him during the year. From this fund, contributed wholly by owners and licensees, compensation is to be paid to the owner and licensee of every licensed premises which the Board determines shall be closed. The Board is directed to reduce the number of licensed houses in each year to such an extent as the moneys to the credit of the Compensation Fund will be sufficient to admit of compensation being paid. It is required to make a maximum valuation of the compensation payable to owner and licensee on certain specified principles. In deciding what licensed premises shall be closed, houses in respect of which convictions for certain offences against the Licensing Acts have been recorded are to be dealt with first, subject to the dominating consideration of the convenience of the public and requirements of the locality. The existence of the Board will terminate in 1916, after which date there will be complete local option.

The new provisions as to clubs and local option are taken almost verbatim from the New South Wales Act, 1905 (No. 40). (y) The remaining provisions of the Act consist of additions to the principal Act as to the conditions of holding the various licences, and as to police control. Many amendments and alterations were introduced during

(u) Contributed by W. Lewers, Esq. (x) See *infra*, p. 165.

(y) See *supra*, vol. i. p. 489.



the passage of the Bill; and these, as well as the complicated nature of some of the provisions, such as those relating to compensation, to which reference has been made, render the Act anything but a model of lucidity.

1907 (z)

Acts passed—62.

**Old-Age Pensions** (No. 2088).—This Act restores the limit of 10s. per week for old-age pensions, which had been reduced to 8s. in 1901, (a) and every pension granted before the commencement of the Act is increased by 2s. a week. The permanent appropriation for pensions is raised from £150,000 to £250,000.

**Railways** (No. 2119).—This is an omnibus Act which, *inter alia*, provides that any railway employee becoming insolvent shall forfeit his office unless he satisfies the companies that his embarrassment has not been caused by fraud, extravagance, or dishonourable conduct; that no order may be made for the attachment of the wages of any railway servant, and no assignment of pay shall be enforceable. All officers and employees of the railways are exempted from giving services. The practice of "scalping" is dealt with by a series of sections forbidding any sale of railway tickets except with the authority of the Companies, and on a prosecution for a contravention the onus of proof that he has not been guilty is upon the defendant. The Act also provides for the establishment of a permanent fund, to be called the Railway Accident and Fire Insurance Fund, to which the railway companies are required to pay 10 per cent. of their revenue. The old limit of liability for injuries to passengers is retained at £2000.

**Murray Settlements** (No. 2123).—This Act contains a scheme for settling unoccupied Crown lands on the Murray Border, and consists of provisions now familiar in settlement schemes as to the tenure and size of holdings, mode of purchase, improvements to be effected, residence, etc. The Act also contains special provision for water-supply for domestic and irrigation purposes to the holders of land under the scheme.

**Municipal Government** (No. 2129).—This Act appropriates £100,000 annually out of the Consolidated Revenue for the endowment of municipalities, to be apportioned according to a classification made by the Act. The municipalities in the several classes receive an amount ranging from 3s. to 12s. for every pound received as rates. No city or town is to receive any part of the endowment, and no borough more than £150.

(z) Contributed by C. J. Zichy-Woinarski and W. Harrison Moore, Esqs.

(a) No. 1751 of 1901, *supra*, pp. 97-101.

**Factories and Shops (No. 2137).** (*b*)—This Act contains a number of miscellaneous amendments to the existing laws on the subject. It provides (s. 5) that in any factory, or workroom, no place used for the purposes of the business shall be used as a sleeping-place, and “for the purposes of this section, all space on each floor of every building not separated by a permanent substantial wall or partition extending from floor to ceiling shall be deemed to constitute a single indivisible room or place, any characteristics to the contrary notwithstanding.” It sanctions the extension (by resolution of both Houses of Parliament) of the Wages Board to any business usually carried on in a shop carting or driving, building and quarrying, and businesses connected therewith (but not including agriculture), the sale or distribution of coal, coke, or wood, or the preparation of firewood for sale. The scope of the Furniture Board is extended to various auxiliary industries and occupations. S. 11 repeals the rules laid down in 1903 for the guidance of Wages Boards and the Court of Industrial Appeals, whereby the wages paid by any reputable employers in any occupation was made the standard to which the minimum wage was to conform. In occupations where the hours of labour are determined, overtime (where permitted) is to be paid for at specified rates and allowances are to be made for “tea-money.” Where an organised strike is about to take place or has taken place in an occupation to which any determination of a Wages Board or the Court of Industrial Appeals applies, the Governor in Council may suspend the determination for a period not exceeding twelve months (s. 34).

S. 35 enables the Government, when satisfied that any manufacture plant, process, or labour used in factories or workrooms is dangerous or injurious to health, or life, or limb, to make such regulations as may be deemed necessary and reasonably practical to decrease or prevent danger.

There are some interesting provisions concerning the “small shops,” relaxing in their case the closing provisions applied to shops generally by the Factories Act (No. 2), 1905, (*c*) s. 22. A “small shop” is defined (s. 41) as one in which only one assistant is employed, and is registered for the benefit of widows and old people, and in cases of great hardship such shops may be registered “at the absolute discretion of the Minister”; and the assistant must be the “husband, wife, child, stepchild, grandchild, brother, sister, nephew, niece, grandparent, or parent” of the shopkeeper.

**Closer Settlement (No. 2128).**—This is an Act supplementary to the existing Acts for the promotion of closer settlement, and particularly to the Closer Settlement Act, 1904. (*d*) It enables the Board constituted

(*b*) See *supra*, p. 134.

(*c*) See *supra*, p. 134.

(*d*) See *supra*, p. 113.

under the Act, when it deems it advisable to do so, to defer the disposition of properties, acquire and to continue the existing tenancies, and otherwise work the property until it is convenient to make it available for sale, and in the case of land made available but not disposed of to grant grazing permits. Where a lessee has expended all his capital in fencing, building, stocking, or otherwise improving his allotment, the Board may make advances to the lessee up to 60 per cent. of the value of his improvements for the purpose of (1) carrying on farming, grazing, agricultural and horticultural pursuits thereon, (2) adding to improvements, such advances, together with interest thereon at the rate of 5 per cent., to be repayable in equal half-yearly instalments over a prescribed period not exceeding sixteen years and to be a charge on the land. The Board is also empowered to make advances to municipalities in respect of the cost of making roads or channels to, or through, any estate acquired by it for the promotion of closer settlement.

**Forests (No. 2095).**—This is a comprehensive Act “to provide for the management and protection of State Forests.” It establishes a State Forests Department under a Minister of Forests, with the (s. 8) exclusive control and management of all matters of forest policy, including the granting of authorities, the collection of revenue, and “the planting or thinning of forests, and the marking, laying out, and maintaining of plantations and nurseries, and the distribution of trees thereon.” A Conservator of Forests is made responsible to the Minister for the proper management of reserved forests, and protected forests and plantations and nurseries, and (subject to Public Service Acts) has control of all forest officers and trainers and persons employed in such forests, etc.

Various areas are designated as “permanent forests,” and are not to be alienated or diverted from this use, except that authority may be granted to use for mining purposes, and that the Governor in Council may excise from such areas “any portion thereof which may be required for public use as mineral or medicinal springs, or for reservation for visitors to any waterfalls, caves, or places of natural beauty or interest, or as health resorts, or for sites for townships or State schools, or for providing roads or means of access thereto, or for irrigation purposes, or water-supply purposes.” Within a period of five years, also, the Governor in Council may excise from the “permanent forests” or from the timber reserves established under the Act any land required for settlement or any other public purpose. The powers of the Governor in Council are subject to the veto of either House of Parliament, and a curious provision requires that copies of the proposed order of excision shall be sent by registered letter to every member of Parliament. In the case of the “timber reserves,” the Minister may, after five years,



propose a reduction in area and such reduction shall be carried out if both Houses of Parliament approve by resolution of the proposal. Power is also given to proclaim additional areas as permanent forests or timber reserves, and to acquire by purchase alienated lands for this purpose. Provision is also made concerning the uses to which forests and timber reserves may be put not inconsistent with the maintenance of their character, for the prevention of fires, and for the protection of forest produce. The Governor in Council may make regulations for carrying out the purposes of the Act.

**Infant Life Protection (No. 2102).**—This is an Act to amend and supplement the principal Act of 1890. It authorises the Government to establish maternity homes, infant asylums, and separate cottage homes for the care of infants and mothers. Regulations may be made for the management of such homes, etc., and for the fees to be paid on behalf of persons lodged therein; the accommodation to be provided in registered homes; prescribing the food to be given to and the care and management and medical treatment of boarded-out infants, and prescribed conditions as to the milk supply and the storage of milk for boarded-out infants. Inspectors are to be appointed to see to the carrying out of the Act. Application must be made to board out any infant, and before permission is given the child is to be medically examined. No child under twelve months is to be boarded out for less than 10s. a week while under twelve months old, or thereafter for less than 7s., and in no case for more than 40s. a week. All payments must, under penalty, be made through the Secretary of the Department. Syphilitic children are removed from the care of the registered person with whom they reside, and if not taken charge of by their parents or guardians, are to be provided for by the Department, which may recover a sum not exceeding 12s. a week for their maintenance. Important provisions are made concerning the death of infants in the care of registered persons. Every such death is to be reported to the coroner, who shall hold an inquest, unless a medical man, who has attended the infant during its life, certifies the cause of death, and the coroner is satisfied therewith. At any inquest it is the duty of the coroner to inquire “not only into the immediate cause of death, but into all such circumstances as may throw any light upon the treatment and condition of the infant during life, and into any other matters into which, in his opinion, it is desirable in the interests of public justice that he should inquire.” No such infant, dying under the age of five years, may be buried without the authority of the coroner. The Secretary of the Department for Neglected Children is required to make an annual report, to be laid before Parliament, of all proceedings under the Infant Life Protection Acts.

**Mines (No. 2127).**—This is an Act for dealing with the injury caused to the land and water-courses through mining operations carried on by means of dredging and sluicing. A board is constituted with the duty of investigating cases of pollution and damage, and the power to order the discontinuance of the acts from which the damage arises, or that measures shall be taken to avoid the mischief. No mining operations by which water-courses are liable to be polluted may be undertaken until the Board is satisfied that proper measures of prevention have been taken. In the mining districts of Ballarat and Bendigo Sludge Abatement Trusts, representing the municipal councils, the owners of land liable to be injured, the registered mining companies, and all other bodies or persons carrying on mining operations within the district, are to execute the powers of the Sludge Abatement Board, and may carry out such works as are necessary to prevent pollution to water-courses or injury to land, the contributions to cost being assessed by the trusts or the interests represented. The Act also substitutes new provisions regarding the ventilation of mines for those contained in previous Acts.

**Moneylenders (No. 2110).**—The provisions of the English Act of 1900 (*e*) were adopted in the Moneylenders Act, No. 2061, and by it the registration of moneylenders was required and express penalties provided for default therein (s. 5). Since the passing of that Act the decision of *Bounardt v. Dott* (*f*) has been given and has negatived the right of an unregistered moneylender to recover money lent by him. The New Act (s. 3) nullifies the effect of that decision by providing that no contract or agreement or transaction entered into by a moneylender with any person or body corporate shall be void or voidable by reason only that the moneylender has, whether in connection with such contract or agreement or transaction or not, been at any time guilty of a contravention of any of the provisions of s. 5 of the principal Act. It also enables a moneylender to deduct from any loan of money all fees, costs, charges, and expenses that may be lawfully charged pursuant to the provisions of the principal Act, except interest (s. 3). And it declares that the assignments which by the principal Act are required to be executed before a police magistrate, county court registrar, clerk of petty sessions, or an independent solicitor, are restricted to consignments to moneylenders only.

**Indeterminate Sentences Act.**—No. 2106 deals in the main with the instinctive and the habitual criminal, and makes the punishment fit, not the crime, but the criminal; it makes, too, more lenient treatment of first offenders possible. By it, when any person of seventeen years or upwards is convicted of any indictable offence, having been previously convicted on at least two occasions of any indictable offence or offences,

(*e*) 63 & 64 Vict. c. 51, see *supra*, vol. i. pp. 63-65.

(*f*) [1906] 1 Ch. 740.

the Court sentencing him may declare him to be an habitual criminal, and direct, as part of his sentence, that at the expiration of the term of imprisonment then imposed upon him he be detained during the Governor's pleasure in a reformatory prison (s. 4). The Court may take evidence, if it thinks fit, before making such a declaration (*ib.*).

Following on this is another section (5) dealing with the instinctive criminal who may not have been convicted previously of any other offence and yet who is often more dangerous to society in organising or inciting others, or, as a receiver, enabling them to dispose of their booty, and who is very difficult to catch. This section directs that when any person of seventeen years or upwards is convicted of any indictable offence, whether previously convicted of any offence or not, the Court may, having regard to his antecedents, character, associates, age, health, or mental condition, the nature of his offence, or any special circumstances, direct as part of his sentence his detention in a reformatory prison during the Governor's pleasure, or, without any other sentence, direct his detention in such prison during the Governor's pleasure.

A further case is dealt with in s. 6—viz. the rogue and vagabond who has been repeatedly convicted of minor offences dealt with by Courts of Petty Sessions. The Act does not give to any Court of Petty Sessions the power to give the indeterminate sentence, but it enables any County Petty Sessions, in dealing with a man who has been frequently convicted, to commit him to appear before the Supreme Court or Court of General Sessions, so that such latter Court may determine whether the indeterminate sentence should be imposed upon him (s. 6).

Prisoners who receive the indeterminate sentence in any of the above cases go to a reformatory prison set apart for them, where they work at some trade or vocation with the incentive of reward. A portion of the earnings of such prisoners is to be accredited to them, so that when they are released they may have some money to provide for themselves and will not be driven by necessity to resort to their old associates for help (ss. 15 and 16).

The administration of the Act is entrusted to an independent Board of three, called the Indeterminate Sentences Board, appointed by the Governor in Council (s. 22), and it is the duty of such Board—

(a) To make careful inquiry as to whether any persons in such prison are sufficiently reformed to be released on probation ;

(b) To consult with the Inspector-General of Penal Establishments ;

(c) To make recommendations to the Governor in Council as to the release on probation of any person in such prison ;

(d) In making such recommendation, to have regard to the safety of the public, or of any individual or class of persons, and the welfare of the person whom it is proposed to release ;



(e) To make certain official reports.

Generally speaking, the release on probation is for two years, and the condition of the probation is that while he remains in Victoria he must, every three months, report himself to the police, with his address and occupation, and must not associate with reputed thieves or cheats or criminals, and if such condition be broken he may be recommitted by any Court to the reformatory prison and detained during pleasure. If, on the other hand, the condition of his probation is observed he is deemed to have suffered his sentence (ss. 17-20).

Provision is made, too, in the Act (ss. 23-30) for the more humane and merciful treatment of first offenders, young in crime, enabling the Court dealing with them to suspend the execution of their sentences by releasing them upon recognisances or condition as to good behaviour for a period to be fixed by the Court and subject to the supervision of a probation officer. The English Act of 1907 (g) has served for the model of these provisions as to first offenders.

His Majesty's Royal prerogative of mercy is not affected by the Act (s. 33).

**Police Offences.**—No. 2093 amends the principal Act. One of the chief clauses is s. 4. It authorises a constable who has reasonable cause to believe that any person is without lawful means of support to arrest him, with or without a warrant, and bring him before petty sessions or justices to be dealt with as an idle and disorderly person. For over forty years this was acted upon as being the law, but a recent decision of the Supreme Court had held it to be not lawful to arrest a person merely because a constable had reason to believe the person had no lawful means of support, and had held that the constable must first satisfy a justice that the person was without means of support before further proceedings could be taken against him. This decision made the law unworkable, and the section restores the law to what has been the former practice; and it adds that the fact that the accused can produce or prove that he possesses money or property shall not be taken into account in deciding the charge against him unless he shows that he honestly obtained the money or property.

The case of a male person living on prostitution is dealt with in s. 5, and upon information on oath before a justice that there is reason to suspect that any house is used by any female for prostitution, and that any male person residing in or frequenting the house or living, wholly or in part, on the earnings of the prostitute, a search-warrant may issue to arrest such male person. If the fact be proved the accused is liable to imprisonment, with or without hard labour, for any term not exceeding two years.

(g) 7 Ed. VII. c. 17, see *supra*, vol. i. p. 145.

A minor penalty, of not more than £20, is also provided for the offence of letting a house for prostitution, or being the tenant of a house and wilfully being party to its use for such purposes (s. 6).

Another recent decision of the Supreme Court caused great difficulty to the police in dealing with undesirable characters, cheats, thieves, or reputed thieves under the law as idle and disorderly persons—viz. that the Court hearing the charge was held incompetent to receive evidence of the previous character or want of character or previous convictions of the accused person.

S. 8 now permits the informant to produce evidence in support of the information to prove that the person charged is a known or reputed thief or cheat or was found in company with reputed thieves or persons having no visible lawful means of support.

S. 9 makes fortune-telling to defraud or impose on any person a summary offence, with a penalty of not more than £25, with imprisonment of not more than six months in default of payment of the fine.

An important clause is s. 10. A person sometimes has property in his possession undoubtedly stolen but impossible to identify, as *e.g.* copper, or lead, or drainards. Power is given to arrest such person, with or without warrant, and to bring him before petty sessions to give a satisfactory explanation of his possession of them, and subjecting him to imprisonment for not more than twelve months on his failure to give a satisfactory account as to how he came by the same. If he declares he received possession from some other person, power is given to the Court to cause such other person to be brought before it and examined, and if such latter person does not satisfy the Court that he came lawfully by the property he becomes liable to the said punishment (s. 11). The Court is further empowered to order restitution to the rightful owner if satisfactory proof of ownership is given (s. 12).

The Act further provides a penalty of not more than £25 or of imprisonment for any term not exceeding six months for publicly exposing in shop windows, stalls, or buildings, or for selling a postcard of an indecent nature or suggestive of indecency. A prosecution is not competent unless the offender has been previously warned in writing by the police that he will be prosecuted if, after the warning, he exposes or sells any such cards, and even then the written authority of a superintendent of police to later proceedings is made necessary.

**Gold-buyers Act** (No. 2138).—This repeals a prior Act of 1901, (*h*) and is a more stringent measure than its predecessor. Gold-buying in the past had been carried on in such a manner as to lead to many unfair practices, and gold-stealing from mines was thought to be becoming prevalent, forcing the mine-owners to protect themselves by

(*h*) See *supra*, p. 101.

severe clauses in agreements with miners as to the right of search. This Act renders it more difficult to dispose of gold unlawfully obtained. One principle in the Act is that, with the exception of banks, gold-buyers shall not be gold-assayers (s. 6).

Gold-buyers and gold-assayers must have licences, and ss. 9-17 deal with applications for licences and renewals. The applicant must publicly advertise his intention to apply for a licence and apply to the Court of Petty Sessions nearest the place at which his business is to be carried on. His application must be accompanied by a certificate from six reputable citizens that he is a fit and proper person to hold a licence, and by a certificate from the police that such a licence is required in the district. The Court may thereupon grant a certificate for a licence, if satisfied as to the character of the applicant and as to the necessity of the licence, and that the premises at which the business is to be carried on abut on a public street, and have a front door opening on such street for customers. Chinese and licensees under the Licensing Acts are not to be qualified to receive licences. The licence fee is an annual fee of 40s. In the case of banks, instead of each bank-manager having to apply for a licence, a general licence can be issued, if the bank prefers it, for every branch of the bank, setting out the names of each branch of the bank to which the licence is to be applicable.

Gold-buyers must have no appliances on their premises or elsewhere for crushing, secreting, or assaying gold other than a pestle and mortar, and banks alone are excepted from this provision (s. 33).

The duties of the licensed gold-buyer and licensed assayer are set forth in s. 24:

- (a) To have his name with the words "licensed gold-buyer," or "licensed gold-assayer," painted distinctly on his premises;
- (b) To keep a gold entry-book in a prescribed form showing all gold received, and when and from whom received, and to send a copy monthly of such entries to the Secretary of Mines;
- (c) To show in such book fully how the gold has been disposed of;
- (d) To allow no person buying or selling gold or bringing gold for assay or smelting to enter or leave the licensed premises except by the front door thereof;
- (e) To produce to any member of the police, duly authorised, his books and entries and any gold then in his possession;
- (f) To inform the police when gold, supposed to be stolen, has come into his possession;
- (g) To keep gold five days without changing the form in which it was received.

Again, gold-buyers are not to buy smelted gold unless the seller



supplies a gold-assayer's certificate showing where the gold was obtained and whether alluvial quartz or manufactured gold; and they are not to pay for gold they buy except by cheque or cash, or by placing the proceeds to the credit of the seller's account at his bank (s. 27).

The gold-buyer or gold-assayer may require a declaration to be made by any person tendering gold for sale, assay, or smelting (s. 28). Hours for business are fixed as between 9 a.m. and 5 p.m. on any week-day except Saturday, when the hours extend to 8 p.m. (s. 29). And the business of gold-buying or assaying must be only at the business premises (s. 30). No dealing is to be made with a child under fifteen years of age (s. 34).

Any person who offers gold for sale or for assay or smelting may be called upon to account for his possession of it, and, if unable to give a satisfactory account of his possession, may be proceeded against for an offence against the Act (s. 38).

The Act does not apply to sales of gold-bearing earth, tailings, concentratus, or products containing gold, but the buyer of such products is to keep a gold entry-book as if a licensed buyer (s. 5).

**Marine Stores and Old Metals Act.**—No. 2092 amends the principal Act of 1890 and makes it more stringent. Robbery of old metals, such as copper boilers, brass fittings, lead, and old metal goods from houses or from mines or machinery in factories, has always been more or less prevalent, and the goods were surreptitiously taken to dealers and at once smelted down and all identification lost. The principal Act had required dealers and collectors of old metals to be registered. This new Act forbids any person to purchase old metals unless he is a licensed collector or a licensed dealer, except at public auction (s. 3).

The principal Act compelled dealers and collectors, after they had been once convicted of having in their possession wares which had been stolen or unlawfully obtained, to produce their books whenever required by the police. This new Act compels them, irrespective of any conviction having been previously recorded against them, to produce books and wares in their possession whenever required by the police; it compels them to notify the police without delay when articles come into their possession answering the description of any articles described as stolen in any printed information given to them by the police; and it compels them to keep all wares purchased by them without changing the form of such wares for a period of seven days (s. 5), thus enabling the police to trace stolen goods.

Dealers were prevented by the principal Act from carrying on business on Sundays or public holidays, but collectors were not subject to that restriction, and it was thought that on holidays the collectors of old metals had special opportunity, if dishonest, of abstracting such

property, and s. 9 therefore prevents collectors, as well as dealers, from carrying on business on Sundays or public holidays. The Act also exempts from its provisions cast-iron, wrought iron, or steel scrap or salvage from shipwreck (s. 8).

**Licensing Act.**—No. 2103 sets right, in a schedule containing a list of minor amendments, some of the provisions of the Licensing Act, 1906. (i) It contains also some few alterations. Under the principal Act of 1890 the number of grocers' licences could not be increased without the sanction of a local option poll, and in the Act of 1905 the section of the principal Act requiring a poll to be taken before such an increase could be had was inadvertently repealed as to grocers' licences, and so s. 3 restores the law to its original position upon that point.

S. 4 enacts that no special permit (granted under the principal Act and allowing a licensed victualler in the neighbourhood of railways and markets to remain open for certain extended hours) shall extend beyond the year in which it is granted.

S. 5 confers on a transferee of a licence any special permit granted to the original licensee to have two or more bars on his premises, and makes such special permit expire also at the end of the year in which it is granted. If such additional bar or bars has or have been used by the licensee to commit breaches against the Licensing Act, power is conferred on the Licensing Court to revoke the permit (s. 6).

In the process of reducing the number of licensed houses to the statutory number, the principal Act required every licensed victualler to be summoned to attend the Court. This has recently been found cumbrous and unnecessary, and so s. 7 limits this requirement to owners and occupiers of such houses as the Licences Reduction Board announces will be dealt with at any particular sitting, with liberty to others to attend, if interested, and to be heard by the Board.

S. 8 empowers the Licences Reduction Board to accept, if the owner and occupier of any house desire to surrender the licence, such surrender, and assess compensation for the deprivation.

Lastly, s. 11 directs that, in prosecutions for trading within prohibited hours, the onus of proof that a person is a *bonâ fide* lodger, traveller, inmate, or servant shall rest upon the accused. The Superior Court had recently taken a view to the contrary, and this section nullifies that view.

**Trustees.**—No. 2105 settles in the affirmative a doubt that existed as to whether an expression in a section of the Trustees Act, 1890 (No. 1105), granting a right of appeal to *any person who feels aggrieved* at any order or adjudication of magistrates in petty sessions would include a person who is an informant to an information charging an

(i) See *supra*, p. 154.

indictable offence or one punishable upon summary conviction, and who is dissatisfied with a dismissal made by the magistrates.

**Default Summonses Act (No. 2081).**—The system of default summonses to recover debts in petty sessions had been introduced by the Justices Act, 1904 (No. 1959), <sup>(i)</sup> and worked well and was freely used instead of the ordinary summons; and municipalities and other local governing bodies also used it to recover rates due from ratepayers. But by the existing law municipalities and like bodies, when suing for rates, are exempt from the fees chargeable to other persons for the service of process. The police in Victoria serve the process of Courts of Petty Sessions and in serving these default summonses upon far-distant ratepayers in country districts long, and at times expensive, journeys by the police at the cost of the State were necessary. The present Act checks this, and enacts that municipalities and like bodies, when using the default summonses to recover their rates, shall pay the mileage fee ordinarily prescribed by law to be paid for service of the ordinary summons before the police are to make personal service of any default summonses for rates.

**Administration and Probate Duties.**—No. 2089 continues for a further period of twelve months (December 31, 1907, to January 1, 1909) the present rates of probate duty chargeable on real and personal property in Victoria of deceased persons, and exempts for the first time public charitable bequests of property from the incidence of such duty.

**Administration and Probate Act (No. 2120).**—This Act makes changes in the existing law as to probate and administration. It provides, in s. 2, that an administrator with the will annexed, after he has discharged his duties as an administrator, shall have the same powers, duties, privileges, and liabilities as a trustee, unless the testator has appointed some other person to be trustee who is able and willing to act.

S. 3 provides some statutory directions to executors as to the payment of probate duty, and directs that it is to be paid out of the residue (defined as unbequeathed personalty and undevised realty) unless a contrary intention appears in the will. This is thought to be more consonant with the general intentions of testators. The section directs also that if there is no residue, or an insufficient one, to pay the duty, then that the duty, or the balance, as the case may be, is to be deducted by the executor from every devise, bequest, or legacy in proportion to its value, unless contrary intention appears in the will. Finally it directs that where successive interests are settled by will, the total duty on the settled property is to be charged against the corpus of such property.

S. 4 in effect nullifies a recent decision of the Victorian Court upon

<sup>(i)</sup> See *supra*, p. 123.



the principal Act, that a person who under a power of attorney from a foreign executor or administrator has applied for and obtained an order affixing the seal of the Victorian Court to a copy of the foreign probate or letters of administration is in the position of the original executor or administrator so far as the Victorian Courts are concerned, and is personally bound to see to their proper administration. This section, on the contrary, allows such a person, after realising the real and personal estate in Victoria, and after discharging all local claims, to pay over to the principal or foreign executor or administrator the balance of the estate without seeing to its application.

S. 5 empowers the Supreme Court to order the discharge or removal from office of an executor or administrator, who remains out of Victoria for two years, or who desires to be discharged, or who refuses or becomes unfit to act in his office, and to appoint a substitute and make all necessary vesting orders.

S. 6 adopts for Victoria the English Intestates Estate Act, 1884, (k) as to the escheat of real estate.

Lastly, under the existing Law, in the case of several executors being appointed by a testator, a trustee company may, with the consent of all the executors, be appointed to apply for probates instead of the executors, and s. 7 now carries this further and enables any one of several executors to appoint such a company to take out probates jointly with the other executors, and the Court can grant probates to the company and other executors, unless the testator has in his will expressed his desire that the office is not to be delegated, or that a trustee company is not to act.

**Real Property Act.**—No. 2086 deals mainly with the limitation of actions relating to real and other property. Over twenty years ago it had been held in the Victorian Courts that if the real owner of land went out of its possession for the statutory period of limitations the first person who went into its possession got a good title by adverse possession, no matter how short a period he had in fact possessed it. In consequence of that view the Law was altered so that where there was no adverse possessor on the land the owner was still to be deemed to be in possession. The Court, however, limited this alteration to the one case of an owner who had himself been once in possession. The present Act extends the principle adopted in the alteration that was made, and the principle is that any land not in the actual possession of any person shall be deemed to be in the possession of the person entitled to such possession. And a mortgage of land is declared to be deemed for the purposes of this Act as from the commencement of the principal Act of 1890, to be and to have been the person entitled to such

possession when and so often as default in payment of principal or interest has been made by a mortgagor (s. 2).

A curious conflict of law as to the limitation of actions to recover rent is ended by s. 3. Under the principal Act of 1890, six years is fixed as the statutory period within which actions for rent must be brought, whilst under the Supreme Court Act of 1890 actions for rent due under any covenant or under any deed may be brought within a period of twenty years. This was never intended, and s. 3 now declares that the rule of the Real Property Act shall obtain, and six years is now the only period within which arrears of rent can be recovered by action.

S. 4 alters the period of limitation of actions of covenant, or actions of debt upon bond, or actions upon an award, from twenty years to fifteen years.

S. 5 deals with adverse possession against the Crown, and declares that no title by adverse possession shall arise against the Crown, and whether the possession has or has not exceeded sixty years.

Ss. 6 and 7 make amendments in regard to the adjoining land-owners obtaining title to land in a *cul-de-sac*.

S. 8 gives complete protection to tenants with regard to buildings and fixtures erected during the tenancy, and enacts that, unless there is a provision to the contrary in the lease, all buildings, fences, engines, machinery, or fixtures shall be the property of the tenant, and shall be removable by him during his tenancy, or during such further period of possession by him as he holds the premises, but not afterwards. The tenant, on removing, must see to it that he does not injure the land or the buildings of his landlord, and that he puts the land and buildings in the like plight and condition as the same were in before his improvements were made.

**Ancient Lights** (No. 2087).—This Act provides that after its commencement no right to the access or use of light to or for any building shall be capable of coming into existence by reason only of the enjoyment of such access or use for any period or of any presumption of a lost grant based upon such enjoyment. Accrued rights are, of course, not affected.

**Transfer of Land Act.**—No. 2094 adds to the list of persons who under the principal Act may attest instruments and powers of attorney, without the limits of Victoria, and so meets the convenience and necessities of persons who live in comparatively unsettled districts in the various States of the Commonwealth and elsewhere, and who at present have to travel long distances to obtain the attestation of a notary public or Commissioner.

By s. 2 the following persons are added to those authorised as aforesaid under the principal Act :—

The Agent-General of Victoria in the United Kingdom ;

The mayor or other chief officer of any city or municipal corporation in any of the States of the Commonwealth of Australia, New Zealand, or other British Possessions ;

The police magistrate, resident magistrate, stipendiary magistrate, or special magistrate, in any of the said States, New Zealand, or other British Possession ;

The manager or accountant of any branch or any bank of issue incorporated under the Companies Act, 1900, having its head office in Melbourne ;

The Registrar-General or Recorder of Titles in any of the said States ;

Any other person whomsoever who is authorised in that behalf by the Governor in Council.

**Friendly Societies Act. (No. 2107).** (l)—On December 3, 1907, there came into operation an Act to further amend the Friendly Societies Acts, and entitled, "The Friendly Societies Act, 1907, No. 2107." (m) Until the passing of the Act there was no statutory provision in Victoria making it compulsory upon societies carrying on the business of Friendly Societies to be registered under the Friendly Societies Acts, and thus come under Government control and supervision. By the Consolidated Friendly Societies Act, 1890, which was a re-enactment of the Act of 1877, it was provided that societies of not less than ten persons might be registered under it to provide by voluntary subscriptions of or levies upon the members thereof, with or without the aid of donations, for certain specific purposes enumerated in the subsections of s. 5 of the Act. Under that provision many of the recognised Orders which had originally been established in Victoria by charter from the parent bodies in Great Britain were registered, as well as others of purely local origin, but there still remained numerous societies and clubs giving sick pay and funeral benefits which had not availed themselves of the privileges of registration. By the Act of 1907, however, all such bodies are required to be registered—those then in existence, within three months from the passing of the Act, and any thereafter established within three months from the date of their establishment. Neglect to comply with this requirement of registration renders the officers of unregistered societies liable to a penalty of £50. This compulsory registration of societies is one of the cardinal features of the new legislation. A second important feature of the Act is the provision (s. 5) under which the registry of a society is to be cancelled if the society fails, when notified, to adopt a scale of contributions which, in the opinion of the Actuary for Friendly Societies, is adequate to meet the benefits undertaken to be given therefor. Formerly there was no

(l) Contributed by G. B. Vasey, Esq., Registrar of Friendly Societies.

(m) See *supra*, p. 141.



effective means of compelling a society, once registered, to bring and keep its scale of contributions up to an adequate rate. Now, however, it is provided that, if it appears to the Actuary that the table of contributions of a society is not adequate, he shall notify the society accordingly, and if he reports to the registrar that any society so notified has not within a limited time adopted an adequate table, it is then the registrar's duty to cancel that society's registry. Power is given (s. 6) to the central body of a society having branches to appoint auditors to audit and inspect the accounts and securities of the branches, the auditors to report to the central body the result of their audit and inspection, accompanying the report by a balance-sheet signed by them giving a correct statement of the financial position of the branch and of its funds. The conditions set out in the principal Act under which registered societies were to be unaffected by the Imperial Acts (*n*) against corresponding societies, are by s. 7 of this new Act repealed. S. 8 enumerates a wider field of selection of securities upon which the funds of societies may be invested, and in the case of investment upon first mortgage of freehold property specific directions are given for the guidance of trustees. In this Act United Friendly Societies Dispensaries for the first time receive statutory recognition, and power is given to them to supply medicines and medical and surgical appliances under limitations mentioned (s. 10). Ss. 11 and 12 introduce amendments affecting matters of administration only.

## 6. WESTERN AUSTRALIA.

1898 (*a*)

Acts passed—37.

**Lodgers' Goods' Protection Act (No. 2).**—The seizure of lodgers' goods to satisfy a distress levied by a landlord on his tenant has been the subject of legislation in England. (*b*) This Act is designed to redress the same hardship and follows the lines of the English Act.

**Warrants for Goods (No. 3).**—By this Act the indorsement and delivery of docks warrants for goods and similar documents confers on the indorsee as against the indorser as good a title as if the contract evidenced by the warrant had been made with such indorsee.

**Beer : Excise Duty (No. 4).**—By this Act an excise duty of twopence

(*n*) 39 Geo. III. c. 79, and 57 Geo. III. c. 19.

(*a*) Contributed by Edward Manson, Esq.

(*b*) 34 & 35 Vict. c. 79.

in the gallon is imposed on all beer, and various careful provisions are adopted for preventing evasion of the duty.

**Customs (No. 5).**—This Act amends the Customs tariff on the importation of animals, clothes, bricks, cheese, iron, hemp, meat, musical instruments, and other things.

**Fire Brigade (No. 8).**—The object of this Act is to organise a proper system of protection against fire—a matter hitherto much neglected. The scheme of the Act is as follows. It constitutes a central authority, called the Fire Brigade Board, having control of all fire brigades throughout the Colony (s. 6). The Board is composed of six members, three nominated by the councils of municipalities and three by the “contributing” insurance companies (c). This Board is charged with the duty of extinguishing fires and protecting life and property in case of fire; and for the discharge of that duty the Board may provide, maintain, and equip fire brigades, engines, escapes, salvage corps, etc. (s. 14). It may also borrow, with the consent of the Colonial Treasurer, and make bylaws for, among other things (s. 18), the payment of fees to the members of the Board and salaries and wages to the officers and members of the fire brigades (s. 21). Volunteer fire brigades are to be registered at the office of the Board. A superintendent of fire brigades is to be appointed by the Board, with power to inspect any fire brigade (s. 28). S. 29 defines the superintendent’s duties in the event of a fire.

*Cost of Maintenance.*—The expense of maintaining the fire brigades is to be met by contributions as to one-ninth by the Colonial Treasurer, as to four-ninths by the contributing fire insurance companies (calculated ratably on the amount of premiums received), and as to four-ninths by the councils of the municipalities (s. 43).

The owner of any uninsured house or property is liable to pay to the Board the expenses incurred by the fire brigades in attending a fire on his premises.

**Crown Suits (No. 9).**—This Act regulates (Part II.) the mode in which debts, damages, duties, sums of money, lands, or goods due, payable, or belonging to the Crown may be sued for and recovered. Part III. provides the mode in which claims may be enforced against the Crown—to wit, by petition delivered at the office of the Crown solicitor. S. 33 defines what claims against the Crown are within the Act. Not more than £2000 is to be recovered against the Crown for any personal injury (s. 34).

**Juries (No. 10).**—This is a consolidating Act. In criminal cases the number of jurors must be twelve. In civil cases it is to be twelve, but may be six, at the option of the party requiring the jury. Ss. 5

and 6 fix the respective qualifications and liability to serve on common juries and on special juries; ss. 7 and 8 define the disqualifications and exemptions. Ss. 9-16 provide for the compilation of a Juror's Book, posting the lists, etc. Ss. 17-20 deal with the summoning of jurors. Ss. 21-5 deal with challenges, which are to follow the law of England. Ss. 26-31 deal with special jurors and the striking of common and special juries. Fees, Tales, View, Payment are dealt with in ss. 32-37.

**Prevention of Crime (No. 13).**—The Legislature has in this Act recognised that prevention is better than cure, and to this end provides for a person twice convicted being subject to police supervision (s. 1). The supervisee must notify his residence and any change thereof to the district police (s. 2): default in doing so renders him liable to a year's imprisonment. The Court may order police supervision in lieu of imprisonment (s. 3). S. 4 gives power to the Court to order whipping for robbery with violence or an attempt to choke.

**Bankruptcy (No. 15).**—The scheme of this Act is to provide the machinery for a debtor making a composition with his creditors, or an assignment in their favour without bankruptcy.

*Composition or Scheme.*—Where a debtor is desirous of adopting the former of these methods he may call a meeting of his creditors, by post or circular, and make a proposal to them for a composition or scheme of arrangement. This, if accepted by an extraordinary resolution of three-fourths in number and seven-eighths in value of creditors present, is to be binding on the whole body; but it is open to any creditor to apply within seven days to the Court to appoint a day to consider the composition or scheme, and the Court may reject it if of opinion that the terms are not reasonable or are not calculated to benefit the general body of creditors, or if facts are proved which would justify the Court in the case of bankruptcy in refusing a discharge or ordering the debtor to be imprisoned (s. 7). If default is made in payment of an instalment, or the scheme cannot in the opinion of the Court proceed without injustice or undue delay, or was obtained by fraud, the Court may annul the composition or scheme (s. 7, viii.).

*Deed of Assignment.*—The creditors at the meeting may by special resolution require the debtor to execute a deed of assignment to a trustee. The form and conditions of every such deed are defined by s. 12. It is to operate as a release of all provable debts (s. 14). S. 26 prescribes the duties of the trustee of such deed, and s. 34 provides for his remuneration. He is to consult the wishes of creditors as to realisation (s. 42).

**Goldfields (No. 16).**(d)—This amends the Goldfields Act, 1895. Among other amendments no miner's right is to be issued to any Asiatic



or African alien (s. 4). A register of buyers and dealers in gold is to be kept at the office of the Department of Mines open for inspection (s. 20).

No. 19 authorises the construction of works for the supply of water to the Coolgardie Goldfields.

**Agricultural Lands (No. 20).**—By this Act no person holding more than one thousand acres is to be eligible to select land under the principal Act—the Agricultural Lands' Purchase Act, 1896.

**Police (No. 21).**—This empowers any member of the police force to prosecute for any breach of or offence against any bylaw or regulation made by any municipality roads board or board of health.

**Marriage: Jews (No. 23).**—By this Act, amending the Marriage Act, 1894, marriages between parties both of whom are Jews are only to be celebrated by a minister of the Jewish religion.

**Health (No. 24) (*d*<sup>1</sup>).**—This is an important enactment of two hundred and forty-six sections, which consolidates the law on this subject, divided into twelve parts. Part I. deals with the health authorities. It establishes a central board of health of five members, comprising a medical practitioner, a civil engineer, and a practical builder. This central board is to control the local boards. Part II. authorises every local board to levy a public health rate. Part III. authorises the central board to make bylaws (s. 32). Part IV. prohibits the adulteration of food, with a saving in favour of a seller proving ignorance; also the sale of food and drugs not of the proper nature, substance, and quality. A local board may appoint analysts (s. 57). Ss. 69–75 provide for proceedings against offenders. Part V. deals with common lodging-houses. Part VI. deals with dwelling-houses. Part VII. deals with infant life protection, requiring houses of persons receiving infants for nursing to be registered. Part VIII. deals with infectious diseases and land quarantine: epidemic and contagious diseases are to be reported. Part IX. provides for hospitals. Part X. deals with nuisances generally, offensive matter, slaughterhouses, pollution of water, morgues, etc. Part XI. provides for the enforcement of the Act. Part XII. regulates legal proceedings.

**Insect Pests (No. 27).**—Under this Act the Governor may appoint inspectors of orchards and gardens. An inspector finding disease is to notify the fact to the occupier and Secretary of Agriculture. Such orchard or garden is then to be deemed an infected place, from which no plants or fruit are to be removed (s. 7). Offering for sale any diseased plant or fruit is made an offence (s. 17).

**Companies Foreign (No. 28).**—*Colonial Register.*—The importance of regulating immigrant foreign companies is coming home to most of the Colonial Legislatures. The present Act requires the attorney of every

(*d*<sup>1</sup>) See *infra*, p. 202.

foreign company carrying on a mining, timber, or land business in the Colony to keep at its office a register of its shareholders, to be called a colonial register, and to register transfers of shares in the same manner and at the same charges as in the register kept at the head office of the company (s. 3).

*Notices of Meeting.*—These are to be issued from the registered office of the company within the Colony.

**Mining on Private Property** (No. 29). (c)—This Act empowers the Minister, with the approval of the Governor, to grant to any person a gold-mining lease of any private land; but conditions—as to the consent of the owner and the depth of the working—are imposed in the case of mines under gardens, orchards, or vineyards, or under private land in any municipality or town site (s. 6). There is an exception also as regards churches and cemeteries (*ibid.*). S. 8 defines the mode of entry upon and marking out private land. The holder of a miner's right may agree—in writing—as to the amount of purchase-money or compensation (s. 10). Where no agreement, the warden is to fix the amount (s. 12).

*Prospecting.*—Any person being an applicant for a lease of any private land, and being desirous of testing such land, may apply for a prospecting area of such land not exceeding five acres.

**Construction of Acts** (No. 30).—The salutary object aimed at in this Act is the consolidating of enactments relating to the construction of Acts of Parliament and for shortening the language used in Acts of Parliament. For example, a number of common form sections are set out in a schedule lettered A B C, etc., and may be incorporated by reference to the schedule and letter.

**Publican's Licence** (No. 34).—The Act evidences the progress of woman.

No person of the female sex who, being of the age of thirty years or more, is a widow or a married woman, living apart or divorced from her husband, shall be disqualified to hold a publican's general licence, or a wine and beer licence, by reason only of her sex (s. 2).

S. 3 disallows a person as a *bonâ fide* traveller unless the place where he lodged during the preceding night was at least three miles distant from the place where he demands to be supplied with liquor.

**Workmen's Wages** (No. 35).—This Act is one of considerable importance to the wage-earning class. By s. 4 the wages due to workmen employed on any contract are to be a first and paramount charge on the moneys due to the contractor in respect of the work,

(c) See *infra*, p. 178, and repealing Act No. 15 of 1904, *infra*, p. 192.

but the amount is limited to £10. Workmen whose wages are in arrear may attach moneys in the hands of the employer (s. 7). In the absence of an agreement in writing to the contrary, the wages of manual labourers are to be paid weekly (s. 3).

**Early Closing** (No. 36).—By this Act every shop is to be closed daily at 6 p.m. except Wednesday or Saturday (s. 7), and for a half-holiday once a week except any week in which a public holiday falls (s. 8). A penalty of £5 is imposed on any shopkeeper keeping a shop assistant in the shop more than three-fourths of an hour after closing hours (s. 9). A woman or person under sixteen is not to be employed more than forty-eight hours in any one week, exclusive of meals (s. 11). Inspectors are to be appointed to enforce the Act (ss. 4, 14). The provisions of ss. 7–10 are not to apply to certain scheduled shops—*e.g.* chemists, fish, tobacconists, butchers, newsagents, florists.

**Crown Lands Act** (No. 37) (*c*<sup>1</sup>).—This is a very elaborate Act, consolidating the law relating to the sale, occupation, and management of Crown lands under the divisions respectively of reserves, purchases by auction, conditional purchases (agricultural lands: poison lands), free homestead farms, working men's blocks, and pastoral lands.

1899 (*f*)

Acts passed—57; Private, 3.

**Elementary Education** (No. 3) (*g*).—This Act deals with school fees, attendance at school, employment of children, census, etc. No fees are to be paid for children between six and fourteen; after that age there is a scale.

Parents of children between six and nine must send them to a school if one is within two miles; parents of children between nine and fourteen must send them if a school is within three miles. The only excuses for non-attendance are efficient instruction at home or unavoidable causes—sickness or danger of infection. Nobody is to take into his employment during school hours any child not exempt from school attendance. Children beyond the control of parents may be sent to an industrial school.

**Company Dividends** (No. 6) (*h*).—Under this Act duties are charged on companies' dividends; and for the purpose of ascertaining the amount payable, companies carrying on business in Western Australia are to make returns of dividends declared. In case of insurance companies (*h*<sup>1</sup>) the duty is to be charged on the premiums.

(*c*<sup>1</sup>) See *infra*, p. 199.

(*g*) See *infra*, p. 201.

(*f*) Contributed by Edward Manson, Esq.

(*h*) See *infra*, p. 190.

(*h*<sup>1</sup>) See *supra*, p. 171.



**Evidence in Criminal Cases (No. 8) (i).**—The influence of English legislation may be seen in this Act. Every person charged with an offence, and the wife or husband, as the case may be, of the person so charged, shall be a competent witness for the defence at every stage of the proceedings, whether the person so charged is charged solely or jointly with any other person. The qualifications engrafted are of the same kind as those of the English Act of 1898. (k)

**Evidence (No. 9) (l).**—This Act provides for the mode of proving Acts of Parliament and the public seals of any Australian Colony, Royal Proclamations, Orders of Privy Council, and incorporation of any company.

**Bees (No. 10).**—These insects are not exempt from contagious diseases. The present Act requires every beekeeper having a hive or swarm of bees so affected to forthwith report the same to the Department of Agriculture and take such steps for eradication of the disease as the Department may direct.

**Weights and Measures (No. 11).**—The regulation of weights and measures—a matter of prime importance in a country of such growing commercial prosperity as Western Australia—is provided for in this Act. Standard weights and measures are fixed, and inspectors are to be appointed by municipal councils. A penalty not exceeding £10 is imposed for using false weights and measures, and any bargain made therewith is annulled.

**Dogs (No. 12).**—A system of registering dogs was introduced into the Colony by the Dog Act, 1883. The present Act assigns the duty of registering to the officers of the roads board. These officers are empowered to search premises for any unregistered dogs. A male adult aboriginal native may keep one dog—to be registered free of charge—provided it is kept free of mange or other contagious disease.

**Customs (No. 13).**—This Act deals with the licensing of customs agents by the Minister.

**Payment of Wages in Goods (No. 15).**—The present Act is an instance of the spread of Truck Act legislation. By it, in every contract thereafter to be made with any workman, the wages of such workman are to be made payable in money only, and contracts made in contravention of this Act, or stipulating as to the mode of a workman spending his wages, are to be void. "Contract" is given the widest interpretation. Employers are liable to penalties on a graduated scale—£10, £25, £50—for repeated breaches of the Act. Certain exceptions to the Act are stated.

(i) Repealed by No. 28 of 1906, *infra*, pp. 197–199. (k) 61 & 62 Vict. c. 36.

(l) Repealed by No. 28 of 1906, *infra*, pp. 197–199.

**Constitution (No. 19).**—This amends and consolidates the Constitution Acts. Among other things it fixes the qualification of electors. Every person of the age of twenty-one being a natural-born or a naturalised subject of her Majesty who has resided in Western Australia for six months is entitled to be registered and vote, provided, *inter alia*, he has a freehold in possession in the province of the clear value of £100, or is a householder occupying a dwelling-house of the clear annual value of £25, or holds a licence from the Crown to depasture, occupy, cultivate, or mine upon Crown lands at a rental of not less than £10 per annum, etc. No aboriginal native of Australia, Asia, or Africa, or person of the half blood, is to be entitled to be registered except in respect of a freehold qualification.

The Legislative Assembly is to consist of fifty members and is to last three years. Judges, sheriffs, clergymen or ministers of religion, undischarged bankrupts, traitors and felons are disqualified as members, also persons holding contracts for the public service.

**Parliamentary Elections (No. 20).**(*m*)—This is a long Act in six parts, consolidating the law relating to Administration (Part I.), Electoral Registration (Part II.), Elections (Part III.), Offences and Penalties (Part IV.), Disputed Returns (Part V.), and Supplementary (Part VI.).

**Intoxicating Liquors (No. 21).**—The *bonâ fide* traveller here appears on the scene, and it is made enough if a publican, without proving a person served to have been a *bonâ fide* traveller, satisfies the justices that he believed him to be so. Women are not to be employed at the bar more than fifty-four hours a week, exclusive of the time for meals, or after twelve o'clock on any night.

**Dentists (No. 25).**—Dentists were by the Dentists Act, 1894, required to register. This Act admits as one of the qualifications for registration that the applicant has for four years practised dentistry or dental surgery in some part of her Majesty's dominions or in the United States of America, holds a diploma from there, and has passed the prescribed examination. The burden is cast on a person accused of unlawful practice as a dentist of proving himself a registered practitioner.

**Agriculture: Loans (No. 25).**—An applicant for a loan under the Agricultural Bank Act, 1894, or by this Act, is to make a statutory declaration that he is sole owner, and is bound as mortgagee to keep fences, fixtures, etc., in good and tenantable repair.

**Pearls (No. 33).**—Under this Act no other than a holder of a pearl-dealer's licence is to buy pearls at any place where the pearl fishery is carried on. A licence may be granted by the resident magistrate; the fee is £10 annually.

(*m*) Repealed by No. 20 of 1904, *infra*, p. 192.

**Mines: Sunday** (No. 35). (*n*)—Sunday labour in mines is the burden of this Act. No person is directly or indirectly to employ any workman for hire to do any skilled or unskilled labour, other than necessary labour specified in the exceptions, on a Sunday in or about a mine.

**Poisons** (No. 36).—This Act imposes conditions on the sale of arsenic or strychnine. The business of a pharmaceutical chemist is not to be carried on except by the chemist himself or a legally qualified medical practitioner. The name of the chemist or his assistant must be conspicuously painted up on the front of the building.

**Bank Holidays** (No. 40).—Whit-Monday is deleted as a Bank Holiday; but its place is more than supplied by six others.

**Gold** (No. 43).—There are other ways of obtaining gold than by ordinary mining. This Act is to encourage them, and for this purpose it provides that the Minister may grant gold-mining leases for twenty-one years of any Crown land for the purpose of sluicing and dredging for gold in any lakes, swamps, or marshes not suited to ordinary mining. Every such lease must contain certain covenants.

**Bills of Sales** (No. 45). (*o*)—English experience in the matter of the bill of sale has evidently not been lost on the legislators of the Colony. The present Act is very carefully drafted. It avoids the dangerous rock of a statutory form, and in lieu of it requires every bill of sale to contain certain particulars, among them the true considerations for the bill, the sum secured, and the rate of interest. No distress for any rent due after registration of a bill of sale is to be available except for four weeks', three months', or six months' rent, according to the length of the tenancy.

There are separate provisions for bills of sale of stock, of crops, and of wool. Debentures also are to be registered in the same way as bills of sale. If there are a series, registration of one suffices.

**Bank Notes** (No. 46).—This imposes a £5 fine for defacing any bank note.

## 1900 (*p*)

## Acts passed—49.

**Constitution Amendment** (No. 5). (*q*)—This Act disqualifies members of the Federal Parliament for nomination or election to the Parliament of Western Australia. A member of the State Parliament elected to the Federal Parliament vacates his seat in the former on taking his seat in the latter.

(*n*) See *infra*, p. 192, and repealing Act No. 36 of 1906, *infra*, p. 201.

(*o*) See *infra*, p. 197.

(*p*) Contributed by R. W. Lee, Esq.

(*q*) Confirmed by Imperial Act, 1901, No. 29, *supra*, vol. i. p. 77.



**Federal House of Representatives (No. 6).**—Western Australia is divided into five Federal electorates, returning one member each to the Federal House of Representatives. Each electorate is sub-divided into electoral districts. The laws relating to State elections are to apply, *mutatis mutandis*, to Federal elections, except that no elector is to vote more than once at one and the same elections.

**Customs (No. 3).**—Duties upon live stock and frozen and chilled meat other than pork are repealed. Persons selling imported frozen or chilled meat are to label the same as such—penalty not exceeding £50.

**No. 14.**—The Commonwealth of Australia Constitution Act by s. 95 permits Western Australia for five years after the imposition of uniform customs duties to impose customs on goods imported from other States of the Commonwealth. This Act continues existing duties in force.

**Municipalities (No. 8).**(*r*)—This is a long Act in twenty-three parts consolidating and amending the law.

**Post Office Savings Banks (No. 10).**—The postal service, but not the Post Office Savings Bank, being transferred to the Commonwealth by the Commonwealth Constitution Act, this Act places the Post Office Savings Bank under the management and control of the Colonial Treasurer. The Colonial Treasurer may with the approval of the Governor arrange with the postal authorities of the Commonwealth for the continued employment of officers of the Post Office in connection with the Post Office Savings Bank. Failing this, he is to appoint a separate staff of officers.

**Noxious Weeds (No. 11).**(*r*<sup>1</sup>)—This Act repeals the Spanish Radish and Scotch Thistle Prevention Act, 1874. Noxious weeds are the plants mentioned in the schedule, and such other plants as the Governor shall declare to be noxious. Owners and occupiers are to destroy noxious weeds after notice. If they fail to do so, a penalty is incurred, and authorised persons may enter for the purpose.

**Government Securities (No. 12).**—This is “An Act to Facilitate the Investment in Western Australian Government Securities of Trust and other Funds in the United Kingdom,” and may be cited as the “Trustees’ Colonial Investment Act, 1900.” The Colonial Treasurer is authorised to pay in London without further appropriation any sum of money adjudged by a Court in the United Kingdom to be payable by the Government of Western Australia in respect of any of its Government securities, and also to make any payments to enable the registrar to comply with orders under s. 20 of the Colonial Stock Act, 1877, (*s*) of the Imperial Parliament.

(*r*) Repealed by No. 32 of 1906.

(*r*<sup>1</sup>) Repealed by No. 45 of 1904, *infra*, p. 193.

(*s*) 40 & 41 Vict. c. 59.

**Distillation (No. 16).**—This is a long Act amending and consolidating the laws relating to distillation.

**Trustees (No. 17).**—This is a consolidating Act modelled upon the Imperial Trustee Act of 1893, (t) together with the unrepealed section of the Trustee Act, 1888. (u)

**Export of Arms (No. 18).**—This corresponds to the Imperial Exportation of Arms Act, 1900. (x).

**Conspiracy and Protection of Property (No. 19).**—The preamble recites that doubts have arisen whether the Acts in force in England at the time of the settlement of Western Australia are in force in the Colony, and that it is desirable to remove such doubt by the introduction of legislation in lieu of the provisions of the said Acts. The Act reproduces in the main the provisions of the Imperial Act of 1875, (y) together with s. 2 of the Trades Union Act, 1871. (z) In the sections corresponding to ss. 4 and 5 of the Imperial the words "wilfully and maliciously" are omitted, and the penalty is only incurred when a person breaks a contract of service without giving seven days' notice of his intention to do so.

**Industrial Conciliation and Arbitration (No. 20).** (a)—This is an Act modelled upon a New Zealand Act of 1894.

Part I. provides for the Registration of industrial unions of employers and of workers. Councils representing several industrial unions may be registered as industrial associations. Such bodies upon registration become incorporated, and may sue and be sued in their registered names.

Part II. relates to Industrial Agreements. The parties may be (1) industrial unions; (2) industrial associations; (3) employers. An agreement is not to be made for a term exceeding three years. A duplicate is to be filed in the Supreme Court office. No industrial agreement shall be invalid merely by reason that it is in restraint of trade.

Part III.—*Conciliation and Arbitration.*—The Governor may create industrial districts. Each district is to have a Board of Conciliation chosen by the industrial unions, with equal representation of employers and workers, and a chairman in addition chosen by the Board, or in default by the Governor. The members hold office for three years. The Board is to inquire into any industrial disputes which shall be brought to its cognisance, either in pursuance of an industrial agreement or in the method provided by the Act. If the Board reports that it is unable to effect a settlement, either party may require a further

(t) 56 & 57 Vict. 53.

(x) See *supra*, vol. i. p. 47.

(z) 34 & 35 Vict. c. 31.

(u) 51 & 52 Vict. c. 59.

(y) 38 & 39 Vict. c. 86.

(a) Repealed by No. 21 of 1901, *infra*, pp. 184, 185.

reference to the Court. After reference to a Board or the Court there shall be no strikes or lock-outs until a final decision is given. The penalty is up to £500 in the case of an industrial union, up to £20 in the case of an individual. A summary order for payment may be made by Board or Court, and the person shall be specified to whom such penalty shall be paid.

*The Court of Arbitration.*—There is to be one Court of Arbitration for the whole Colony, to consist of three members, one each to be appointed on the recommendation of the councils of the industrial associations of workers and of employers respectively. The president is to be a judge of the Supreme Court. The members of the Court are to hold office for three years. The award shall be made within one month after the Court has begun to sit, and is to avoid technicality. The Court may in its award or by subsequent order determine what shall constitute a breach of the award, and may impose a penalty not exceeding £500. The award is to specify the industrial unions, associations, and persons to be bound by it, and the period, not exceeding two years, during which its provisions may be enforced.

The Act concludes with provisions for the enforcement of awards and other matter supplemental and miscellaneous.

**Public Service** (No. 21). (*b*)—This deals with the constitution of the public service, and with the appointment, duties and privileges, and removal of public servants.

**Drainage of Land** (No. 22).—The Governor may, on petition from the majority of ratepayers in any part of the Colony, constitute a drainage district. Drainage boards will be elected for each district to have control of drainage works, with power to levy a rate.

**Goldfields** (No. 23).—The first part of this Act provides for the granting of "Miners' Homestead Leases." These provisions will apply only to such goldfields as the Governor may from time to time direct. The extent of land to be leased to any one person within one goldfield is not to exceed twenty acres, if within two miles of a town boundary; if outside such limit, five hundred acres. The Governor may resume a miner's homestead after six months' notice to the lessee, who is entitled to compensation. The second portion of the Act amends the Goldfield Acts, 1895-8. (*c*)

**Carriage of Mails** (No. 26).—Railway companies are to convey by any train mails tendered for conveyance.

**Parliament: Payment of Members** (No. 32).—Members of Parliament are to receive a salary of £200 per annum. Officials are not to be paid except so far as their salary falls short of the sum of £200.

(*b*) See *infra*, pp. 186, 187.

(*c*) See *supra*, p. 172, *infra*, p. 188, and repealing Act No. 15 of 1904, p. 192.



**Kangaroos** (No. 33).—The Governor may by proclamation allow kangaroos to be killed for food only during a close season and on native game reserves.

**Slander of Women** (No. 36).—Words imputing unchastity or adultery to be actionable without special damage. (*d*)

**Compensation for Injuries** (No. 37).—The Act of the Imperial Parliament commonly known as Lord Campbell's Act (*e*) purports to be "An Act for compensating the Families of Persons killed by Accidents." It confers a right of action on the personal representatives of a person whose death has been caused by a wrongful act, neglect, or default, such that if death had not ensued that person might have maintained an action. The right conferred is for the benefit of the wife, husband, parent, and child of the deceased. By an amending Act of 1864, (*f*) if there is no personal representative, or if no action is taken by personal representatives within six months, persons beneficially interested may sue in their own names. Also, by s. 2, money paid into Court may be paid in one sum without regard to its division into shares.

Lord Campbell's Act was adopted in Western Australia by 12 Vict. No. 21. The present Act enacts for the Colony the provisions of the Imperial Act of 1864.

## 1901 (*g*)

Acts passed—36.

### 1 *Edw. VII.*

**Customs** (No. 3).—The Commonwealth of Australia Constitution Act by s. 95 permits Western Australia for five years after the imposition of uniform customs duties to impose certain duties of customs on goods imported from other States of the Commonwealth. This Act continues existing duties in force.

**Presbyterian Church of Australia** (No. 4).—This Act gives legal effect, as far as Western Australia is concerned, to a scheme of union entered into by the Presbyterian Churches of the various Colonies to form one Presbyterian Church of Australia. The Act does not come into force until (1) the Moderators of the General Assemblies of the several Churches have executed a deed poll signifying the acceptance of the scheme; (2) the Parliaments of the other States have passed Acts giving effect to it; (3) a notice of the above facts signed by the Moderator of the General Assembly of the Presbyterian Church in Western Australia has been published in the *Government Gazette*.

(*d*) 54 & 55 Vict. c. 51.

(*f*) 27 & 28 Vict. c. 95.

(*e*) 9 & 10 Vict. c. 93.

(*g*) Contributed by R. W. Lee, Esq.

1 & 2 *Edw. VII.***Gaols Acts Amendment (No. 3).**

The Governor may by notice in the *Gazette* declare any lock-up to be a police gaol (s. 2).

Any Court may commit to a police gaol for a period not exceeding three calendar months (s. 3). S. 12 specifies the cases in which a guard or warder may fire upon a prisoner—viz. (1) if he attempts to escape, or (2) if he attempts an assault; provided that such firing appear to be necessary to prevent escape or that the assault committed or attempted be of a character apparently dangerous to life or likely to cause bodily harm to the person assaulted or threatened.

Commitments under the Debtors Act, 1871, may be made to a police gaol (s. 14).

Persons in custody may be brought up to answer any further charge or to give evidence on an order of Court without *habeas corpus* (ss. 15 and 16).

**Workers' Compensation. (No. 5)—**

S. 4.—This Act applies only to injuries of workers employed—

- (1) On or in or about any railway, waterwork, tramway, electric-lighting work, factory, mine, quarry or engineering or building work.
- (2) On or in or about any employment declared by proclamation to be dangerous or injurious to health or dangerous to life or limb, provided that no such proclamation shall issue except pursuant to addresses from both Houses of Parliament.

Questions as to liability to pay compensation, etc., if not settled by agreement, are to be determined by the magistrate of the local Court sitting with two assessors (s. 8).

Special provision is made to secure compensation or damages, whether under the Act or independently of the Act, to workers in mines, factories, buildings, or vessels. The amount of compensation or damages to which any such person shall become entitled shall from the date of the accident become a charge upon the employer's estate or interest in such mine, factory, building, or vessel, and the plant and appliances thereof (s. 17).

In other respects this Act follows the model of the Imperial Act. (*h*)

**Criminal Code (No. 14).** (*i*)—An introductory Act of ten sections contains a code of criminal law in a schedule and provides that it is to come into operation on May 1, 1902.

(*h*) 60 & 61 Vict. c. 37.

(*i*) See *infra*, p. 200.

The code itself extends to seven hundred and thirteen sections and deals both with substantive law and with procedure. It consists of eight parts, each divided into numerous chapters: Part I., Introductory; Part II., Offences against Public Order; Part III., Offences against the Administration of Law and Justice and against Public Authority; Part IV., Acts Injurious to the Public in general; Part V., Offences against the Person, and relating to marriage and parental rights and duties and against the reputation of individuals; Part VI., Offences relating to Property and Contracts; Part VII., Preparation to commit Offences, Conspiracy, Accessories after the Fact; Part VIII., Procedure.

All or nearly all pre-existing criminal law is repealed. The Act aims at being exhaustive, and includes such topics as corrupt and improper practices at elections (chap. xiv.), frauds by bankrupts, etc. (chap. liv.).

**Supreme Court: Additional Judge** (No. 16).—This Act provides for an additional judge of the Supreme Court at a salary of £1400.

**Bush Fires** (No. 18).—This is an Act to diminish the dangers resulting from bush fires. All earlier Acts are repealed.

S. 5.—The Governor may by notice in the *Gazette* declare the times of the year during which it shall be unlawful to set fire to the bush within any district or part of the State mentioned in the notice. Penalty up to £50.

S. 7.—No person shall burn any bush during the months of October to April inclusive without taking precautions—viz. (1) written notice to adjoining owners or occupiers; (2) three men at least in attendance to prevent fire spreading.

**Trades Unions** (No. 19).—This Act closely follows the provisions of the Imperial Acts of 1871 and 1876 (*h*). By s. 31 a registered trades union or branch thereof may be registered under the Industrial Conciliation and Arbitration Act, 1902.

**Industrial Conciliation and Arbitration** (No. 21).—This repeals the corresponding Act of 1900, (*l*) but re-enacts the greater part of it with improvements and additions.

An entirely new group of sections relates to Government employees. By s. 107, if any person employed by the Government on daily wages payable weekly or fortnightly, is a member of any industrial union composed of workers of the same trade as such person, the Minister of the department in which such person is employed shall in relation to all such persons be deemed an employer.

Any association or society of Government railway servants may register under this Act as an industrial union of workers (s. 108).

(*h*) 34 & 35 Vict. c. 31, and 39 & 40 Vict. c. 22.

(*l*) See *supra*, pp. 180, 181.



S. 109 enacts that if an industrial dispute arises between the Minister and any such union, it may be referred to the Court for settlement. A union may petition the Court to hear and determine any matters in dispute. No such petition shall be filed except pursuant to a resolution of a special meeting of the union called for the purpose. If the Court considers the dispute sufficiently grave to call for investigation and settlement, it shall notify the Minister thereof and appoint a time and place for the inquiry. In no case shall the Board of Conciliation have any jurisdiction over the Minister or the workers employed in his department. Except when inconsistent with the express provisions of ss. 107 to 109, every union of Government employees shall be subject to and entitled to all the provisions of this Act.

**Public Health** (No. 23).—S. 7 validates proclamations, orders, and regulations for the purpose of preventing the spread of bubonic plague made or purporting to be made in pursuance of the provisions of the principal Act except as regards actions and suits already commenced, and indemnifies all persons in respect of anything done by them in pursuance of such proclamations, etc.

**Early Closing** (No. 24). (*m*).—S. 3.—The Governor may by proclamation declare any municipality to be a district for the purposes of this Act.

S. 4.—The closing time for all shops except those mentioned in Schedule I. situated in any district shall be on one week-day one o'clock, on one week-day ten o'clock, and on the four other week-days six o'clock. Shops shall remain closed until 8 a.m. or such earlier hour as shall be mentioned in the proclamation.

Every shopkeeper may elect to close early on Wednesday and late on Saturday or *vice versa*. When he has two or more shops in any one district, they shall all be closed at the same time.

When in any week a shop is closed for the whole day by reason of a bank holiday or public holiday, it may remain open until six o'clock on the weekly half-holiday. Shops may be kept open until 10 p.m. on the week-day next preceding Christmas Day or New Year's Day.

S. 5.—A majority of shopkeepers (of shops not scheduled) in any district may memorialise the Minister to change the days of early and late closing, and thereupon alteration may be made by proclamation.

S. 6 relates to the closing time for hairdressers' shops, which is to be 10 p.m. on Saturdays and 6.30 p.m. on other week-days.

S. 9.—No shop assistant is, except on some special occasions for which provision is made, and except in scheduled shops, to be employed in or about a shop for more than half an hour after closing time.

S. 10.—In scheduled shops one half-holiday in each week must be allowed.

(*m*) See *infra*, p. 191.

S. 11.—One hour is to be allowed daily for dinner, and also one hour for tea when the shop remains open after 6.30 p.m.

S. 12.—No woman or young person under the age of sixteen years is to be employed for more than nine hours daily, exclusive of meal times, except on one day in the week, when the period may be twelve hours, nor for more than fifty-three hours in any week.

Ss. 13 to 23 relate to the appointment and powers of inspectors, penalties, etc.

**Coal Mines' Regulation** (No. 25).—An Act of seventy-six sections with a schedule of rules. It appears to be modelled upon the corresponding Acts of Victoria and New South Wales.

**Royal Commissioners' Powers** (No. 28).—An Act for procuring the attendance of witnesses before Royal Commissions.

**Prescription of Light and Air** (No. 29).—No rights of access of light and air are to be acquired by prescription, grant, or otherwise unless by grant which (1) must be made by deed duly executed and registered, (2) shall provide that the benefit thereof shall endure for a term not exceeding twenty-one years.

**Trading Stamps' Abolition** (No. 30).—A trading stamp is any stamp, coupon, document, etc., which entitles the holder to demand and receive from any trading stamp company any money or goods. All such contrivances are prohibited under a penalty not exceeding £10. Trading stamps issued before the commencement of the Act must be redeemed in cash or goods at holder's option at the rate of fourteen shillings in the pound. If the issuing company fails or refuses to redeem, the holder may sue for and recover the value in cash.

## 1902<sup>(n)</sup>

## Acts passed—49.

**Public Notaries** (No. 8).—Established public notaries are confirmed in their office, but must register within twelve months of the commencement of the Act (s. 4). Any future notary must be either (1) a practitioner of the Court of three years' standing; or (2) a practitioner of the Court who has practised for seven years as a public notary in some part of his Majesty's dominions (s. 5). Other sections relate to application for admission, enrolment, etc.

**Marine Stores.**—No. 9 provides for the licensing of collectors of and dealers in marine stores.

**Indecent Publications** (No. 14).—An Act to suppress indecent and obscene publications. Works of recognised literary merit and *bonâ fide* medical treatises are excepted.

**Public Service.**—No. 16 amends the Public Service Act, 1900.<sup>(o)</sup>

(n) Contributed by R. W. Lee, Esq.

(o) See *supra*, p. 181.

Nothing in the principal Act as from the commencement thereof shall be construed or held to abrogate or restrict the right or power of the Crown to dispense with the services of any person employed in the public service (s. 14).

**Mining Development (No. 20).**—"Pioneer mining" means carrying on mining operations at places where the expenditure of large sums of money extending over a considerable period of time will be necessary to test or develop the mine (s. 3). Any person or company may apply to the Minister for an advance by way of loan for carrying on pioneer mining. All moneys advanced shall be provided out of moneys authorised by Parliament to be applied for such purpose (ss. 4 and 5). The sum advanced is not to exceed £1000, and the borrower is to spend pound for pound out of his own capital. The loan is to bear interest at 5 per cent., and is to be secured by a first mortgage of the mine (ss. 8 and 9).

Part III. contains provisions for advances to miners for prospecting.

Parts IV., V., and VI. authorise the Minister to purchase and erect plant for crushing, etc., to pay for boring, and purchase drills.

**Droving.**—No. 30 repeals the Droving Act, 1894, and regulates the droving of travelling stock—*i.e.* stock taken or driven to any place more than forty miles from their run of origin. The owner or person in charge must have about him a way-bill or delivery-note producible on demand to any proper authority. A duplicate of such document is to be posted to the Chief Inspector of Stock.

**Police.**—No. 31 amends the Police Act, 1892. Any person charged with having (1) on his person or on any animal or in any cart or other vehicle, or (2) in his possession on any premises of which he is the tenant or occupier, or reputed tenant or occupier, any gold reasonably suspected of being stolen or unlawfully obtained, must prove his innocence or incur a penalty not exceeding £50 or six months' imprisonment. Other provisions relate to disorderly houses, Sunday entertainments, etc.

**Dividend Duties.**—No. 32 imposes duties in respect of dividends or profits of incorporated companies. A company includes every incorporated company or association (wheresoever and howsoever incorporated) which carries on business in Western Australia; but does not include—

- (a) A registered friendly society;
- (b) A life insurance company; or
- (c) Any brewery or other company paying duties of excise.

Every person employed in the execution of the Act is to take an oath of fidelity and secrecy (s. 4). Within seven days from any declaration of dividend by a company carrying on business in Western



Australia *and not* elsewhere the company is to make the prescribed return, and pay a duty of 5 per cent. upon the amount or value of the dividend. If the Minister is dissatisfied with the declared value, he may assess (s. 6).

Companies carrying on business in Western Australia *and* elsewhere are on or before April 1st in each year to make a return of local profits made during the year ending on December 31st last preceding. The Minister shall assess the local profits and the company pay a duty of 5 per cent. (s. 7). Insurance (other than life insurance) companies pay a duty of 1 per cent. on their gross premiums (s. 8).

A company dissatisfied with any assessment may after payment of duty appeal to the Supreme Court (s. 27).

**Goldfields Water Supply.**—No. 33 constitutes a Goldfields Water Supply Board, and defines its powers and duties.

**Rabbit Pest** (No. 34).—The Governor may appoint a Chief Inspector and other officers for the purposes of the Act (s. 6). The Minister may, out of moneys voted by Parliament for the purpose, erect and maintain fences on any Crown land or private land to protect any part of the State from the incursion of rabbits (s. 9).

Any occupier or owner of land may apply to the Minister for rabbit-proof fencing to enclose his land. The cost is to be secured by mortgage of the land to be enclosed, repayable by equal annual instalments extending over a period not exceeding twenty years, and bearing interest at 4 per cent. per annum (ss. 20 and 21). Adjoining owners may be required to contribute to the annual payments (s. 26). When a rabbit-proof fence has been *bonâ fide* erected as such by an owner or occupier of land, whether before or after the commencement of the Act, he is entitled to recover from adjoining owners half of the cost of construction and maintenance of so much of the fence as is on the common boundary (ss. 16 and 17).

It is the duty of the owners and occupiers of land to destroy rabbits (s. 27). Notice of the presence of vermin is to be given to the Chief Inspector. Any animal, bird, or reptile declared by notice in the *Gazette* to be a "natural enemy" of the rabbit is protected (s. 34). The inspector may require rabbits to be destroyed, and in default enter to destroy them (ss. 30 and 31). No person is to pay or offer a reward for the destruction of rabbits (s. 42), nor in any part of the State west of the barrier fence without licence sell a dead nor anywhere keep a live rabbit except in a safe enclosure by the Minister's written permission. Penalties not exceeding £50 and £100 for each offence (ss. 41 and 43).

**Supreme Court Salaries.**—No. 37 determines the salaries of the judges of the Supreme Court—viz. Chief Justice, £2000; three puisnes, £1700 each.

1903 (*p*)

Acts passed—16 ; Private 1.

**Co-operative and Provident Societies (No. 2).**—This provides for the incorporation and regulation of co-operative and provident societies.—Ss. 3–4: A society for carrying on any lawful business other than banking may be registered; but no member shall have or claim any interest in the shares of the society exceeding £200. No society shall be registered which does not consist of seven persons at least. S. 6: Appeal to the Supreme Court from Registrar's refusal to register. S. 8: The Registrar may after notice in certain cases suspend, and with the approval of the Minister cancel, the registry of a society. There is an appeal to the Supreme Court. S. 9: The rules of a registered society must contain provisions in respect of the matters mentioned in the first schedule to the Act. Ss. 10–14 provide for a registered office, annual audit, etc. S. 15: Upon registration a society becomes a body corporate with limited liability. S. 18: A member may nominate any person to whom shall pass upon his decease his property in the society (or part of it) not then exceeding £50. Such nomination shall be made in writing and entered in a book kept for the purpose. It may be varied or revoked in like manner, but not by will or codicil. S. 27: A society may invest its capital as provided by the rules, or in certain specified securities, may hold land (s. 28), and make advances to members (s. 29). S. 35: Disputes are decided as provided by the rules or, by consent of the parties (unless the rules expressly forbid it), by the Registrar with the consent of the Minister. Except for the enforcement of an award, or to have a case stated on matter of law, there is no recourse to the Courts, unless the rules provide this or no other method of settlement of disputes.

Other provisions relate to Inspection (ss. 37–8), Change of Name, Amalgamation, Conversion of a registered society into a company and *vice versa*, Dissolution (ss. 46–48), Offences, Penalties, and Legal Proceedings (s. 49, etc.).

**Railways (No. 4).**—The Trans-Australian Railway Enabling Act enables the Parliament of the Commonwealth, in pursuance of s. 51 (xxxiv.) of the Constitution, to make laws for the construction and maintenance of a railway from Kalgoorlie to the eastern boundary of Western Australia, and of another railway to run due north from the Port of Eucla to the point of intersection. The State Government on its part undertakes the construction of a railway of like gauge, etc., from Kalgoorlie to Fremantle.

**Bread (No. 5).**—This Act amends the law relating to the making and sale of bread, and (*inter alia*) prohibits Sunday baking before 5 p.m.

(*p*) Contributed by R. W. Lee, Esq.

**Dogs** (No. 6).—This Act repeals the Dog Act, 1883. S. 5: Every person keeping a dog is to have it registered annually, and (ss. 8, 9) he thereupon receives a receipt and label. S. 14: Changes of ownership must be registered, but without fee. S. 19: Stray dogs may be seized and destroyed or sold. S. 29: The owner is liable in damages for injury done by his dog without proof of *scienter* or of negligence. S. 29: Adult male aboriginal natives may have one unregistered male dog each. The registration fee is 7s. 6d. for every dog, 10s. for every bitch.

**Shipping** (No. 7).—This applies Part II. of the Merchant Shipping Act, 1894, (*r*) to all British ships registered at, trading with, or being at any port in Western Australia.

**Companies** (*s*) (No. 9).—This continues in force the Companies' Duty Act, 1899, (*t*) for the recovery of duties due and payable and penalties incurred thereunder.

**Judicature** (No. 10).—This amends the Supreme Court Act, 1880, so as to remove doubts as to the Governor's power under s. 12 of that Act to assign by general or special commission appellate as well as original jurisdiction to persons appointed Commissioners of the Supreme Court.

**Parliament** (No. 11).—This provides for the election of senators for Western Australia to the Senate of the Commonwealth. S. 9 is of a novel character: "In all cases where it is impracticable to communicate any writ, proclamation, or notice by post without occasioning undue delay, any telegraphic advice communicated in the ordinary course shall suffice."

**Probate and Administration** (No. 13).—This is an Act to consolidate and amend the law relating to probate and administration and the duties on the estates of deceased persons, and for other purposes. It extends to one hundred and thirty-eight sections, and is divided into parts as follows: I., Preliminary. II., Probate and Administration. III., Foreign Probate and Administration. IV., Curator of Intestate Estates. V., Caveats. VI., Duties on Deceased Persons' Estates, and Succession Duties. VII., Miscellaneous.

The estate duty rises from 1 per cent. on estates not exceeding £1000 in value to 10 per cent. where the value exceeds £50,000.

**Prisons** (No. 14).—The Prisons Act, 1903, in seventy-nine sections consolidates and amends the law relating to prisons.

**Lunacy** (No. 15).—This is an Act of one hundred and ninety sections.

(*r*) 57 & 58 Vict. c. 60.

(*s*) A statement of the law relating to companies may be found in a memorandum prepared for the Imperial Conference, 1907, Cd. 3589, p. 37.

(*t*) See *supra*, p. 175.



Part IV. relates to habitual drunkards, and empowers the Court to make an order for compulsory detention in any hospital for the insane (but in a ward or division in which lunatics are not detained), or in a licensed house, for a period not exceeding twelve months. Application may be made either by the habitual drunkard himself, or by parent, husband, wife, child, or friend.

1904 (*u*)

Acts passed—64; Private, 3.

**Early Closing** (No. 1).—This amends the Early Closing Act, 1901. (*x*) S. 1 provides for the incorporation of the amending Act in all copies of the principal Act hereafter printed. The sections are to be re-numbered under the supervision of the Clerk of the Parliaments. Alterations are to be indicated in the margin.

**Water Boards** (No. 4).—This Act provides for the construction, maintenance, and management of works for the storage and distribution of water. S. 4: The Governor may by Order in Council constitute water areas and water boards. S. 7: The board may be a local authority, or elected, or nominated by the Governor, or partly elected and partly nominated. S. 41: Before undertaking the construction of works in the water area the board shall (1) cause surveys and levels to be made and taken; (2) prepare plans, etc.; (3) advertise particulars in the *Gazette*. S. 42: The plans, specifications, estimates, etc., shall be open for inspection. S. 46: The board may (1) enter upon any land shown on the plan; (2) acquire lands under the Public Works Act, 1902; (3) construct and maintain ditches; (4) sink wells and make reservoirs; (5) divert streams. Ss. 55–57: The board is charged with the duty of supplying water to rated land, and may supply water to land not rated on terms agreed. S. 93: The rate is not to exceed 2s. in the pound on the annual ratable value. S. 113: Boards may borrow subject to the Governor's approval.

**University Endowment** (No. 6).—This is an Act for the endowment of a State University. S. 2: The Governor may appoint seven trustees, who are to form a body corporate under the name of the Trustees of the University Endowment. S. 4: By way of permanent endowment the Governor may grant or demise Crown lands to the trustees. S. 6: The trustees are to have the entire control and management of all property vested in or acquired by them. S. 13: They may receive out of the income of the trust property such remuneration as the Governor may approve.

**Audit** (No. 12).—The Audit Act of 1891 is repealed by this Act,

(*u*) Contributed by R. W. Lee, Esq.

(*x*) See *supra*, p. 185.

which relates to the collection and payment of the public moneys, the audit of the public accounts, and other matters of State finance.

**Mining** (No. 15). (*y*)—This Act (in three hundred and ten sections) consolidates and amends the law relating to mining for gold and other minerals. Earlier Acts are repealed, with the exception of ss. 56–62 (inclusive) and schedule of the Mining on Private Property Act, 1898. (*z*)

S. 5: The administration of mines is vested, as heretofore, in the Minister of Mines and in wardens appointed by the Governor. S. 10: The Governor may proclaim gold-fields and (s. 13) mineral-fields. Ss. 19–41: The Minister and every warden may issue miners' rights. S. 42: The Governor may grant gold-mining and (s. 48) mineral leases of Crown lands to any person not being an African or Asiatic alien. Ss. 45 and 53: the term of such leases is not to exceed twenty-one years, but with a right of renewal subject to regulations in force at the time. Ss. 115–164: Mining on private land. S. 117: Subject to the provisions of this Act and regulations under it (1) all precious metals on or below the surface are the property of the Crown, (2) and all other minerals on or below the surface of any land which was not alienated in fee simple from the Crown before January 1, 1899. S. 121: The Governor may resume private lands for mining purposes in the manner prescribed by the Public Works Act, 1902. Ss. 165–173: Drainage of mines. Ss. 174–203: Miners' homestead leases. Ss. 204–225: Purchase and sale of gold. Ss. 226–266: Administration of justice. Ss. 267–305: General provisions. Ss. 306–310: Regulations. The Governor may from time to time make regulations for a great variety of matters specified.

**Parliamentary Elections** (No. 20).—The Electoral Act, 1899, (*a*) is repealed. Provision is made for the regulation of elections, the preparation of electoral rolls, the issue of writs, nominations, polling, scrutiny, electoral offences, and disputed returns. Part IX. permits voting by post (s. 79) in the case of "any elector (1) who intends to be absent from the State on polling day; or (2) who has reason to believe that he will on polling day be more than five miles from a polling place at which he is entitled to vote; or (3) who, being a woman, believes that she will, on account of ill-health, be unable on polling day to attend a polling place to vote; or (4) who will be prevented by serious illness or infirmity from attending a polling place on polling day." But the intending voter must attend before a resident magistrate or other person appointed thereto if he wishes to avail himself of this section.

(*y*) Repealed by No. 36 of 1906, *infra*, p. 201.

(*z*) See *supra*, p. 174.

(*a*) See *supra*, p. 177, and repealing Act No. 27 of 1907, *infra*, p. 202.

**Factories** (No. 22).—S. 3: The Governor may appoint a Chief Inspector of Factories. S. 7: Factories are to be registered after inspection. S. 20: Women and boys under fourteen are not to be employed for more than forty-eight hours, excluding meal-times, in any one week. S. 23: The same limit is set to the employment of persons of Chinese or other Asiatic race. S. 38, for the better suppression of what is commonly known as “the sweating evil,” provides that a record shall be kept of all persons to whom the occupier of a factory lets or gives out work of any description in connection with textile or shoddy material, and if such person (1) directly or indirectly sub-lets the work or any part thereof, whether by way of piece-work or otherwise; or (2) does the work or any part thereof otherwise than on his own premises, and by himself or his own workpeople to whom he himself pays wages, he shall be guilty of an offence.

**Government Railways** (No. 23).—This consolidates and amends the law relating to the maintenance and management of Government railways.

**Public Service.**—By No. 41 the Public Service of the State is based upon the same lines as the Commonwealth Public Service Act, 1902, (b) with additions from the New South Wales Act of the same year. The administration of the Act is in the charge of a Commissioner, and it is thought necessary to enact that—

no member of Parliament shall interview or communicate with the Commissioner regarding the appointment of any applicant for a position in the Public Service.

The Commonwealth allows “annual leave of absence for recreation” for eighteen days, but the State only two weeks.

**Noxious Weeds.**—The Noxious Weeds Act, 1900, (d) is repealed, and in its place is passed an Act (No. 45) similar to the New Zealand Act, 1900. (e)

**Local Courts.**—The law upon this subject is consolidated in No. 51. Local Courts presided over by magistrates have jurisdiction in all personal matters in which the amount claimed is not more than £100, but not in actions concerning titles to land, libel or slander, seduction, breach of promise, or testamentary matters.

**Boilers and Machinery Inspection.**—In No. 53 are collected together the provisions for the inspection and regulation of boilers and machinery, forbidding the working of any young person under fourteen at or with any machinery, and making regulations as to the fencing of machinery and the rectification of defective machinery. The Act also makes provision for the inspection of boilers, and sets forth the duties and

(b) See *supra*, vol. i. pp. 416, 417.

(d) See *supra*, p. 179.

(e) See *infra*, pp. 231, 232.



liabilities of owners of boilers and machinery. It also includes the law as to the examination and certifying of engine-drivers.

**Crossed Cheques.**—No. 54 amends the Bills of Exchange Act, 1884, by adopting the provision of the English Crossed Cheques Act. (*f*)

**Distress.**—The law on this subject is amended by No. 55, incorporating the provision of the New South Wales Act, 1898, (*g*) as to exemptions from goods taken in distress for rent, and the provision of the English Act (*h*) respecting clothes, bedding, and tools.

**Merchant Shipping.**—No. 59 is an Act of one hundred and six sections dealing with the duties of the Chief Harbour Master and other officers, the constitution and powers of the Court of Marine Inquiry, the duties of surveyors and owners in regard to steam navigation, the examination and certifying of masters, mates, and engineers, and the measures for the prevention of accidents.

**Branding of Stock.**—No. 61 makes provision in the most elaborate detail for the registration of brands on stock. Details are given of the brands to be used and a registrar, with deputy registrars, is appointed to secure the efficient administration of the Act. Inspectors look out for straying and unbranded stock.

## 1905 (*i*)

Acts passed—29.

**Life Assurance** (No. 12).—This Act amends the Life Assurance Companies Act, 1889.

S. 2: The interest of the assured in a policy effected upon his own life is not liable for his judgment debts and does not pass to his trustee in bankruptcy. Nor are moneys payable upon death by virtue of such policy liable to satisfy a judgment unless by virtue of (1) a contract or charge made by the assured during his lifetime, or (2) an express direction contained in his will. This does not include a general direction or trust or charge for the payment of debts.

The Act does not apply (1) until the policy has endured for at least two years, except in case of the death of the assured, (2) except to policies the premiums on which are expressed to be made during the lifetime of the assured, or during ten years at least, and to be payable by equal instalments at intervals of not more than a year.

S. 4: In case of the loss or destruction of a policy, the company after public advertisement may, and by order of Court must, issue a special policy, and the lost or destroyed policy thereupon becomes void.

**Secret Commissions** (No. 13).—The following acts are constituted misdemeanours: (1) receipt or solicitation of a secret commission by an

(*f*) See *supra*, vol. i. p. 131.

(*h*) 51 & 52 Vict. c. 21.

(*g*) See *supra*, pp. 448, 449.

(*i*) Contributed by R. W. Lee, Esq.

agent [s. 2]; (2) gift or offer of a secret commission to an agent [s. 3]; "Agent" includes the agent's parent, husband, wife, child, partner, clerk, or employee [s. 4]; (3) giving to an agent a false or misleading receipt or account [s. 5]; (4) gift or receipt of a secret commission in return for advice given [s. 6]; (5) offer or solicitation of secret commission in return for advice given [s. 7]; (6) offering or solicitation of a reward to or by a trustee for authorising another person to be substituted in his place [s. 8].

The penalty in the case of a corporation is a fine not exceeding £500, in the case of any other person a fine to this amount or (and) imprisonment up to two years [s. 11].

The custom of any trade or calling is not in itself a defence to a prosecution under the Act [s. 15]. The burden of showing that a gift was offered or solicited otherwise than in contravention of the Act is cast upon the accused [s. 16]. No prosecution may be instituted without the consent of the Attorney-General [s. 18].

**Aborigines (No. 14).**—This is an Act to make provision for the better protection and care of the aboriginal inhabitants of Western Australia.

S. 3: The term "Aboriginal" includes (1) an aboriginal inhabitant of Australia; (2) a half-caste who lives with an aboriginal as wife or husband; (3) a half-caste who otherwise than as wife or husband habitually lives or associates with aborigines; (4) a half-caste child whose age apparently does not exceed sixteen years.

S. 4 establishes an Aborigines Department charged with the duty of providing for the reservation and well-being of the aborigines. S. 5: The sum of £10,000 per annum is to be appropriated for this purpose.

S. 6 defines the duties of the department. S. 7: A chief protector of aborigines is to be appointed by the Governor and is responsible under the Minister for the administration of the department.

S. 9 prohibits the removal of an aboriginal to any place beyond the State without the written authority of a protector.

S. 10: The Governor may declare any Crown lands to be reserves for aborigines. S. 12: Aborigines may (with some exceptions) be removed to reserves and kept there. S. 14: No other persons may enter a reserve except officials.

S. 17: The employment of aboriginals, or of a male half-caste under the age of fourteen years, or of a female half-caste, is only allowed under permit from a protector, or under permit and agreement. S. 9: The duration of a permit is limited to twelve months. S. 20: Aborigines and half-castes may not be employed on ocean-going vessels.

S. 22 regulates the terms of agreements of service and employment. S. 23: A duplicate of every agreement is to be sent to the protector,

S. 33: The protector may manage the property of aboriginals, but not without the consent of the owners, except so far as may be necessary to provide for the due preservation of such property.

The remaining sections of the Act are taken up with miscellaneous provisions for the morality and well-being of the aboriginal races. The Governor is empowered to make regulations to carry out the purposes of the Act (s. 60).

**Statutes Compilation** (No. 15).—When directed to do so by a resolution of both Houses of Parliament, the Attorney-General shall undertake the compilation of any Act in force in the State with its amendments. He may make consequential and other alterations in order to give effect to implied appeals, to secure uniformity of expressions, etc. The compilation shall then be certified as correct by the Attorney-General, and shall be laid upon the table of each House of Parliament at the commencement of the next succeeding session. It may then be passed into law by an enacting Statute with two appendices; Appendix A to contain a list of Acts and parts of Acts comprised in the compilation; Appendix B to contain the full text of the compilation. The enacting Statute shall repeal the Acts comprised in Appendix A. It is not competent to amend or alter either of the appendices, otherwise than for the correction of errors of transcription or printing, or for the incorporation of any amendment, which may have been made after the preparation of the compilation and before the passing of the enacting Statute.

**Totalisators** (No. 19).—Totalisator “means and includes the instrument, machine, or contrivance, commonly known as the totalisator, and any other instrument, machine, or contrivance of a like nature, or any scheme for enabling any number of persons to make bets with one another on the like principles.”

A duty of  $2\frac{1}{2}$  per cent. is charged on the takings of totalisators. Accounts are to be forwarded to the Colonial Secretary. All moneys payable by a race club under the Act are debts due to his Majesty jointly and severally by the secretary and the persons who are members of the committee or executive body.

**1906** (*k*)

Acts passed—36.

**Public Works** (No. 8).—An Act to amend the Public Works Act, 1902.

S. 2 (1) For the purposes of constructing any underground work, land under the surface may be acquired under the principal Act without acquiring the surface.

(*k*) Contributed by Herbert du Parcq, Esq.



- (2) In such case no compensation shall be allowed or awarded except in certain cases, which the Act specifies.

**Secondhand Dealers (No. 10).**—Persons carrying on the business of purchasing, selling, or exchanging secondhand articles (s. 2) are required to be licensed (ss. 3-6).

Licensees are required—

- (1) To keep a register of articles bought, sold, or exchanged ;
- (2) To produce their licences on demand ;
- (3) To purchase secondhand goods only between 8 a.m. and 6 p.m. and at no time from persons “apparently under the age of sixteen years” (s. 9), or from any intoxicated person (16) ;
- (4) To keep goods purchased by them for at least four days after purchase in their original form.

Penalties, including in certain cases the cancellation of the licence, are imposed by ss. 11, 12, and 16.

The Act does not apply—

- (1) To any person who does not carry on the sale or exchange of secondhand articles at a shop, store, or place of business, nor to any person purchasing such articles for the purpose of manufacturing other articles therefrom, except purchasers of secondhand jewellery (s. 13) ;
- (2) To the purchase or sale by any person of secondhand household furniture, books, mining machinery or appliances (s. 15).

S. 14. When the ownership of any goods which have been unlawfully sold or exchanged is established to the satisfaction of two justices, they may order the delivering up of these goods to the owner, with or without compensation to the person by whom they were so sold or exchanged, in their discretion.

**Bills of Sale (No. 13).**—The Act amends the Bills of Sale Act, 1899. (*l*)

S. 3 (1): Notice of intention to register a bill of sale to be given at the office of the registrar at the Supreme Court.

S. 7: If a caveat is entered against the registration of a bill of sale, such bill of sale shall not be registered until the caveat is removed or withdrawn.

**Evidence (No. 28).** (*l*<sup>1</sup>)—This is an Act to consolidate and amend the Statute Law of Evidence, Competency, and Compellability of Witnesses.

S. 6. No person is to be excluded from giving evidence on the ground that he may have an interest in the matter in question, or because he has been previously convicted of any offence.

S. 7 makes parties in civil proceedings, and also the husbands and

(*l*) See *supra*, p. 178.

(*l*<sup>1</sup>) See *supra*, p. 176.

wives of such parties, competent and compellable to give evidence on behalf of either or any of the parties, subject to the provisions of the Act.

S. 8 allows the defendant, or wife or husband of the defendant, in criminal cases, to give evidence for the defence.

S. 9: (1) Wife or husband is to be a competent and compellable witness for the prosecution or defence in certain criminal cases.

(2) Wife of person charged in certain cases is to be a competent and compellable witness, either for the prosecution or the defence, at every stage of the proceedings, and without the consent of the person charged.

(3) The same provision is to apply to the husband of the person charged in certain cases.

(4) Makes a wife, upon the prosecution of her husband on her complaint with respect to her property, a competent and compellable witness for the prosecution or defence, etc.

In the case of a similar prosecution by the wife, the husband to be a competent and compellable witness.

S. 10: Defendants to be competent and compellable as witnesses on the trial of an indictment instituted for the purpose of trying or enforcing a *civil* right only.

S. 11: The judge may tell a person declining to answer a question on the ground that it tends to criminate him, that, if he answers the question satisfactorily, he will be granted a certificate which may be pleaded in bar to prosecution.

S. 15: Persons present at legal proceedings may be compelled to give evidence without a subpoena.

Ss. 18, 19: A husband and wife are not to be compelled to disclose communications made by one to the other during marriage, except where husband and wife are parties in divorce and matrimonial causes.

In a proceeding instituted in consequence of adultery, no witness is to be liable to answer questions tending to show that he has been guilty of adultery, unless he has already given evidence in the same proceeding in disproof of his alleged adultery.

Ss. 24-32 deal with the protection of witnesses.

S. 25 (1) allows the Court to exercise a discretion as to whether a witness shall or shall not be compelled to answer questions put in cross-examination which are not relevant to the proceeding, except in so far as they affect the credit of the witness by injuring his character.

(2) (a) (b) (c) define the limits within which the Court shall exercise that discretion.

S. 27: This section enacts that any person who prints or publishes any question which the Court, having disallowed as being indecent or scandalous under s. 26 of the Act, has forbidden to be published, shall be liable to punishment for contempt of Court.

S. 35: Two witnesses necessary to support a charge of perjury.

S. 37: A person shall not be convicted of any of the offences against morality mentioned in the Third Schedule to the Act upon the uncorroborated testimony of one witness.

S. 39: On the trial of any person for an offence of such a nature that proof that any place was kept, etc., for gaming purposes, it shall be presumed that any person found playing at any game in such place was playing for some money, wager, or stake.

S. 40: In Customs prosecutions the onus lies on the defendant of establishing his innocence, except in certain specified cases.

S. 43 provides that in a newspaper libel action the plaintiff be non-suited unless he gives evidence on his own behalf.

S. 48: The testimony of a plaintiff in an action for breach of promise of marriage must be corroborated by some material evidence.

S. 49: "In an action to recover damages for seduction brought by a parent of the woman seduced, or by a person standing to her in the place of a parent, it shall not be necessary to allege or prove that she was in the service of the plaintiff, or that he sustained any loss of service by reason of the seduction."

Apparently there is nothing in this section to prevent a parent of a woman seduced, who has sustained no loss of service, and her employer, who has sustained loss of service, from both bringing an action to recover damages for the same seduction.

S. 50: Corroboration required in cases of bastardy.

Ss. 57-73 deal with the proof of certain documents.

S. 89: A copy of an entry in a banker's book shall be evidence of such entry, subject to the provisions of the Act.

Ss. 97-106 deal with the mode of taking evidence.

Ss. 107, 108 deal with depositions.

**Land (No. 29).**—Land Act Amendment Act further amends the Land Act, 1898 (No. 37). (*m*)

S. 3 repeals s. 5 of the principal Act. The Governor may acquire from any person, with his consent, any land or interest in land which he may deem it advisable to acquire for any purpose.

S. 4 empowers the Governor to resume land from pastoral leases for agricultural settlement.

S. 7. The Governor may establish local land districts.



S. 8 : The Governor may appoint a District Land Board for any land district.

S. 38 : The Governor may declare certain lands open for selection as grazing leases.

S. 70 : The Governor may declare any Crown lands open for selection as special settlement lands.

**Criminal Law.**—Criminal Code Amendment Act (No. 31) amends the Criminal Code. (*n*)

By s. 2, s. 20 of the Code is amended. It is henceforth provided that punishment inflicted upon a prisoner already undergoing sentence may be directed to take effect from the expiration of the preceding sentence, and that sentences pronounced together may be directed to take effect concurrently or cumulatively.

When, upon conviction, a question of law is reserved and the convicted person is admitted to bail pending the decision of the Supreme Court, the period during which he has been at liberty upon bail shall be deemed not to have been served under the sentence.

S. 5 : A new section is inserted in the Code. Any person who, without lawful justification, places in any water-hole upon private or Crown lands poisonous or noxious matter, rendering it unfit for human consumption or for consumption by cattle, etc., is guilty of a misdemeanour.

“On any prosecution under this section the onus lies on the accused person to prove all facts negatived in the complaint or indictment.”

S. 7 : A new section is added, rendering directors, officers, or agents of companies wilfully making false statements as to their company's business, with intent to increase or lower the market value of the company's shares, guilty of a misdemeanour punishable with two years' imprisonment with hard labour, and a fine. Proceedings under this section must be authorised by the Attorney-General.

S. 8 : A new section is added, making it a misdemeanour punishable with two years' hard labour, and a fine, for a person required or permitted to give certificates, etc., of births, deaths, or marriages to give information false in any material respect.

S. 12 amends s. 558 of the Code. Criminal Courts are to take judicial notice of the Attorney-General's signature, and indictments purporting to be signed by a person authorised to prosecute are to be deemed to be duly signed in the absence of proof of the contrary.

The Attorney-General or other person authorised to prosecute may indict a person committed for trial for other offences than those mentioned in the commitment.

S. 13 substitutes for s. 667 (1st par.) provisions by which it lies in

the discretion of a Court trying indictable offences to reserve a question of law for the Supreme Court. Provision is also made for appeals to the full Court against a refusal to reserve a question of law.

**Boats.**—No. 33 is an Act to amend the Boat Licensing Act, 1878.

S. 8 authorises every licensing board to inquire into charges of incompetency or misconduct on the part of any licensed master or coxswain.

S. 9: Every licensing board may make regulations. Ss. 1-16 enumerate the matters on which such regulations may be made.

S. 10: Every such regulation shall, upon approval by the Governor and publication in the *Government Gazette*, have the force of law.

**Mines** (No. 36) (*n*<sup>1</sup>).—An Act to provide for the Inspection and Regulation of Mines.

S. 5: The Government may appoint inspectors of mines.

S. 20: No person to act as manager of more than two mines.

S. 50: Employers to satisfy themselves of the safety of the appliances in use, and failure to report danger to be an offence under the Act.

S. 53: No boy under the age of sixteen years, and no female, shall be employed below ground in any mine.

## 1907 (*o*)

## Acts passed—33.

**Education.**—No. 2, amending the Public Education Act, 1899, (*p*) makes education compulsory for children between the ages of six and nine if there is a school within two miles; between nine and fourteen if within three miles, or within twelve miles if there is a suitable railway service not requiring the child to walk more than two miles, and allowing him to leave and return to his residence between sunrise and sunset.

**Statistics.**—No. 3 re-enacts and extends the scope of the Industrial Statistics Act, 1897, and places the whole work under the control of a Government Statistician.

**Land and Income Tax.**—The assessment of land and income for purposes of taxation is regulated by No. 15 upon the lines of New South Wales legislation with some modifications adopted from New Zealand. Upon absentee landlords the rate of taxation is increased by 50 per cent. A rebate of the tax is allowed upon impaired land.

In assessing the "taxable amount" of incomes deductions may be made, *inter alia*, as follows:—

Where a taxpayer employs his sons or daughters over the age of sixteen

(*n*<sup>1</sup>) See *supra*, pp. 178, 192.

(*o*) Contributed by C. E. A. Bedwell, Esq.

(*p*) See *supra*, p. 175.

years in his trade or occupation, such sum may be deducted for their services as to the Commissioner may seem reasonable.

A sum representing ten pounds for each child under the age of sixteen years, residing with and dependent upon the taxpayer.

**Elections.**—No. 27 repeals and enacts with amendments the Electoral Act, 1904. (*g*) The Inspector-General of the Insane, the Superintendent of Public Charities, and the Comptroller-General of Prisons are to furnish returns of those who come under their care in order that their names may be struck from the electoral lists.

**Children.**—The State Children Act (No. 31) is a consolidating measure (*r*) to make better provision for the protection, control, maintenance and reformation of neglected and destitute children. It follows the lines of legislation in the other States in making provision for the constitution of a State Children's Department, special courts for the trial of offences committed by children, and the licensing of children engaged in street trading.

**Marine Insurance.**—No. 33 is a copy of the English Marine Insurance Act, 1906. (*s*)

## 7. TERRITORY OF PAPUA. (*a*)

FORMERLY

### BRITISH NEW GUINEA.

1898

Ordinances passed—13.

In dealing with this possession it seems proper to include certain proclamations and sub-statutory regulations which do not emanate directly from the Legislature, but are of considerable general interest or importance.

**Foreign Enlistment.**—By proclamation gazetted April 30, 1898, the Foreign Enlistment Act, 1870, (*b*) was proclaimed in the Colony. (*c*)

**Coinage.**—A proclamation gazetted July 30, 1898, promulgated in

(*g*) See *supra*, p. 192.

(*r*) It repeals among others Part VII. of the Health Act, 1893 (*supra*, p. 173).

(*s*) 6 Edw. VII. c. 4. See *supra*, vol. i. p. 133.

(*a*) Contributed by W. F. Craies, Esq.

(*b*) 33 & 34 Vict. c. 90.

(*c*) See s. 3 of that Act. As to proof of such proclamations, see *R. v. Jameson* [1896], 2 Q. B. 425.



the Colony an Imperial Order in Council of February 3, 1898, (*d*) applying the Imperial Coinage Act, 1870, (*e*) and the Coinage Act, 1891, (*f*) with modifications to British Guinea and other Colonies. The modifications preserve the right to make legal tender to an unlimited amount in silver or of foreign coins where the local law on July 30, 1898, gave such right.

**Pandery.** (*g*)—Regulation No. 2 of 1897, made by the Native Regulation Board, and assented to by the Lieutenant-Governor in Council, November 23, 1897, and gazetted March 19, 1898, provides (Art. 2), any person that (*sic*) does anything with the object of inducing or compelling any female native to have sexual intercourse with a male person that (*sic*) is not her husband is guilty of a forbidden act and of wronging a native. Art. 3 forbids any person possessing authority over a female native to accept any gift or benefit for allowing or not forbidding her to have sexual intercourse with a male person not her husband.

**Education.**—Regulation No. 3 of 1897 (made by the same authority) compels school attendance three days a week by children over five and under thirteen at a school selected by the European magistrate of a district, with the written consent of the European missionaries under whose charge the school is. It is prefaced by an explanatory article: "Children learn things more easily than grown-up people do. Children now growing up will, by the time they become men and women, need to know more about reading and writing and arithmetic than their parents do. But some foolish parents do not care whether their children learn these things or not. It is therefore for the good of the children that this law is made."

**British New Guinea Syndicate.**—Ordinance No. 1 was passed on March 21, 1898, to enable an English syndicate or company to acquire and occupy Crown lands, not exceeding two hundred and fifty thousand acres, for the cultivation of the indiarubber plant and other tropical and agricultural produce, and for the discovery and working mines and minerals, and for getting and winning gems, metals, minerals, and mineral ores. S. 2 gives the company, for six months from the date of the Ordinance, the sole right to purchase all or any suitable lands declared to be and still available for occupation, (*h*) and a like right for six months as to lands subsequently made available, until the two hundred and fifty thousand acres are acquired. After eight years from the date of the Ordinance the sole right of purchase ceases, if sufficient

(*d*) "Statutory Rules and Orders Rev.," 1904, vol. ii. tit. "Coins, Colonies," p. 114.

(*e*) 33 & 34 Vict. c. 10.

(*f*) 54 & 55 Vict. c. 72.

(*g*) This is the term used in the regulation. It seems to be borrowed from the German.

(*h*) This Ordinance came under severe animadversion in Queensland and in the Imperial Parliament.

land has during the period been available for purchase (s. 5). The company is required to pay two shillings an acre and the residue by instalments.

**Native Labour.**—No. 2 (*i*) deals with native labour. It was reserved for her Majesty's pleasure, and was assented to by Order in Council of July 18, 1898, and amends in certain details the Ordinance of 1892. S. 4 allows the issue of permits to remove natives as seamen to Australia and adjacent Dutch and German possessions, and to Western Pacific Islands, declared to be within the section by Order of the Administrator in Council. This section has been applied by proclamation (*k*) to all islands for the time being within the Solomon Islands Protectorate. Under s. 5 European missionaries may get permits to remove natives to Australia for the purpose of translating from English into native languages of the possession. Ss. 6 and 7 deal with the form and enforcement of guarantees required from persons obtaining permits.

**Fish Protection.**—No. 6 forbids the use of explosives (*l*) for catching fish in waters to be specified by proclamation of the Administrator, *i.e.* in all inland waters and all territorial sea waters of the possession. (*m*)

**Chinese Immigration.**—No. 8 restricts the immigration of Chinese s. 4, prohibits entry of any ship carrying more than one passenger of the Chinese race (*n*) per five hundred tons of the ship's tonnage measured, if the ship be British, by the rules in the Imperial Merchant Shipping Act, 1894. (*o*) This applies to transshipping vessels (s. 10). By s. 5 a list of all Chinese on board, including the crew and stowaways, must be delivered to the collector of customs before any one lands. By s. 6, before the ship clears, the master must muster before the collector all the Chinese crew and passengers. Chinese unlawfully entering by land or sea are subjected to penalties, and may be summarily prosecuted, notwithstanding lapse of the ordinary period of limitation—six months (s. 8, 9, 10). By s. 11 the Administrator or Treasurer may, by writing, authorise the seizure of any ship the master of which has infringed, or is a defaulter under, the Ordinance, and in release on bond; and if penalties under a conviction are not paid, the ship may be sold. Whether a passenger is Chinese or not may be decided by the Court on view, and the burden of proof is thrown on the accused (s. 13). The only Chinese exempted are (1) duly accredited diplomatic or Consular representatives or emissaries;

(i) See *infra*, p. 207.

(k) Gazetted December 17, 1898.

(l) Cf. Imperial Acts 40 & 41 Vict. c. 65 (*Public Fisheries*); 41 & 42 Vict. c. 39, s. 12 (*Freshwater Fisheries*).

(m) Proclamation gazetted September 24, 1898.

(n) See *Musgrave v. Chun Teeong Toy*, [1891] A. C. 272.

(o) 57 & 58 Vict. c. 60.

(2) persons born in British New Guinea; (3) persons or classes exempted by gazetted proclamations by the Administrator in Council (ss. 2, 3). It is to be noted that the exclusion is regulated by race and not by allegiance, and that Chinese from Hong Kong or the Straits Settlements who are British subjects are within the grip of the Ordinance.

**Validity of Marriages.**—No. 9 removes doubts as to the validity of certain marriages celebrated (before September 12, 1898) before any missionary or teacher of any Christian mission, or before any minister of religion of any denomination of Christians. The validation is to be effected by order of the Administrator in Council (s. 1), made on the application of both parties if living, or by the survivor if one is dead (s. 2), and on production of such evidence as is required (s. 3), and subject to such inquiry before a justice of the peace as may be directed (s. 4). The validating order is to specify the date as from which the marriage is to be deemed valid (ss. 5, 6) and is to be registered (s. 7), and will not affect the validity of other marriages contracted before September 12, 1898 (s. 9).

**Public Health.**—No. 10 is an Ordinance for the better preservation of the public health. Part I. authorises the declaration by Order in Council duly gazetted that a district is infected in which an infectious or contagious disease is suspected to exist (s. 2). There is no definition of the diseases to be included in the term "Infectious or contagious." Where such an order is in force, no one may leave the district without permission (ss. 3, 4), nor may persons from outside an infected district communicate with or approach the district (s. 6). Vessels having a passenger from an infected district may be isolated and treated as infected districts (s. 5). Part II. deals with vaccination. It provides for vaccination, by public vaccinators (including all Government medical officers), or other persons certified as competent to vaccinate, of all persons presented to them for the purpose. The public vaccinators must act gratuitously, except under special written leave of the Administrator; but that does not debar an ordinary medical practitioner from taking a fee or make it obligatory on certified persons to vaccinate. Ss. 16 and 17 empower the passing of an Order in Council directing certain persons, or a certain class of persons, or all the inhabitants of a district to present themselves for vaccination, and empower any person entitled to vaccinate to arrest defaulters and vaccinate them by force. By s. 18, if a person entitled to vaccinate as aforesaid should be uncertain whether any person whom it is proposed to vaccinate (1) is a person ordered to be vaccinated, or (2) has already been vaccinated, he may nevertheless vaccinate him. S. 19 punishes attempts to produce small-pox by inoculation with variolous matter or otherwise.



By Part III., s. 20, "The Administrator in Council may from time to time make any regulations that he may deem requisite for preventing the spread or the possession of any disease affecting human beings, or for carrying into effect the provisions of this Ordinance. . . . Such regulations shall be published in the *Gazette*, and shall be laid before the Legislative Council as soon as they have been made, and shall be subject to disallowance by her Majesty."

**Public Hospitals.**—No. 11 empowers the Administrator to establish and maintain public hospitals at any place in the possession, and to accept endowments for hospital purposes. Hospital property is vested in the Colonial Secretary as trustee for public hospitals (s. 10). The financial management is controlled by the Colonial Treasurer (ss. 11, 12). The hospitals are to be governed by public hospital rules made by the Administrator, gazetted and laid before the Legislative Council, and dealing, *inter alia*, with the terms and fees of admission, but not with medical treatment. Part II. constitutes a committee of management for each hospital, and deals with their duties. Part III. provides for the appointment (by the Administrator) of all medical and other officers of the hospitals, subject to suspension by the committee of management.

## 1899

### Ordinances passed—5.

**Lands.**—No. 4 (*p*) regulates the dealing with lands in the possession. It is to a large extent a consolidation Ordinance, and repeals prior Ordinances on the same subject, with sundry savings (s. 3).

Part II. prohibits all dealings with natives for the purchase of land, or any right therein or to the usufruct thereof (ss. 4–6), except by the Administrator, who may purchase in the public interest from natives lands which they do not require (ss. 7, 8).

Part III. provides for acquiring and recording the acquisition of Crown lands and of leases to the Crown, and for registration of the instrument of title under the Real Property Ordinance of 1889 (s. 9); and it also deals with repurchase by the Crown of land as to which Crown grants have issued, and authorises the Crown to take possession of waste or vacant lands never alienated by the Crown, and not used or likely to be used by native-born Papuans.

Part IV. deals with settlements on Crown or waste land. It prohibits settlement without legal right.

(1) By any but native-born Papuans on native lands;

(2) By any person on Crown land, or land held by the Crown under lease, or upon vacant land.

(*p*) Repealed by No. 5 of 1906, *infra*, p. 214.

Part V. deals with the alienation of Crown lands in fee simple, which may be effected by the Administrator in Council by grant to natural-born or naturalised British subjects (s. 15). Grants may be made to missions for religious purposes (s. 17), but not by way of reward for exploration (s. 16), nor till after proper survey, except where a whole island is granted (s. 19). Power is given to sell Crown lands by public auction or private treaty—

- (1) For building allotments (s. 25);
- (2) In blocks not exceeding 640 acres (s. 31); and
- (3) To settlers in blocks not exceeding 5000 acres (s. 32).

Provisional grants may be issued where land is sold on condition of its improvement, or where a title in fee simple cannot be given for want of survey or other cause (ss. 33, 34).

Part VI. deals with leases and provisional leases of Crown lands or land in which the Crown has a leasehold interest. Special regulations are made as to leases for—(a) Agriculture; (b) Pasture; (c) Trade or fishing; (d) Cocoanut plantations.

All grants and leases, absolute or provisional, are to be read as conveying a reservation of all mines and minerals, and of rights of access for their working (s. 47).

**Mines.**—No. 5 repeals the gold-mining laws previously in force in the possession, and adopts as the law of the possession the Mining Act of 1898 of Queensland (*q*), with certain modifications. The law is applied, not only to gold, but to platinum and any metal belonging to the platinum group of metals, and to the metals themselves and any earth containing them, or having any of them mixed in the substance thereof, or set apart for the purpose of extracting such metals (s. 3). The fee for miners' rights is 10s. (s. 4). The Central Court of the possession is substituted for the Supreme and District Courts of Queensland (s. 5).

## 1900

### Ordinances passed—9.

**Native Labour.**—No. 1 (*q*<sup>1</sup>) consolidates and amends the laws regulating the employment of native labour and the dealings between natives and others (*r*). It was reserved and assented to by the Queen in Council on June 29, 1900. Contrary to the Royal instructions to the Administrator of the Colony, the Ordinance was not reserved for her Majesty's assent before being brought into operation, and action was

(*q*) 63 Vict. No. 24, *supra*, vol. i. p. 499.

(*q*<sup>1</sup>) Repealed by No. 1 of 1907, *infra*, p. 216.

(*r*) No. 2 of 1892; No. 3 of 1893; Nos. 2 and 8 of 1897; and No. 2 of 1898, *supra*, p. 204.

taken under it before the Royal assent was notified. It became, therefore, necessary to pass another Ordinance (No. 5) to validate all acts done under it from May 1st to June 29th.

The Ordinance is of seventy sections and is divided into thirteen parts. It prescribes the conditions under which it is lawful to employ or remove natives—*i.e.* “aboriginal natives of the possession.”

Part I. (preliminary) contains definitions and exemptions of natives in the employ of the Crown, savings of the Criminal Law and the Merchant Shipping Acts and of the Pearl and Bêche de Mer Fishery Ordinances, and provides for the appointment of officers to enforce the subsequent provisions of the Ordinance. “Native” in this Ordinance is restricted to “aboriginal natives of the possession.”

Part II. restricts the employment and removal of natives and provides for licences to persons recruiting natives. Natives cannot be taken over twenty-five miles from their homes for service without recourse to a magistrate, except in what are styled “settled labour districts.”

Part III. deals with the engagement of natives.

Part IV. authorises magistrates to cancel or alter written contracts of service.

Part V. deals with permits to remove natives within the possession, Part VI. with permits to remove natives beyond the possession, for fishing in Torres Straits or the Gulf of Papua, on boats *bonâ fide* stationed in the possession, as boatmen or seamen to Cook Town or Thursday Island, or as seamen for single voyages to certain specified places in Australasia.

Part VII. specifies the obligations incurred by persons who employ or remove natives.

Part VIII. regulates the payment and recovery of wages which fall due day by day but are ordinarily payable by the month.

Part IX. provides for the inspection of vessels and of native labourers.

Part X. deals with offences by native labourers, including desertion and neglect of duty.

Part XI. deals with other offences, such as engaging natives by false pretences or inducing them to desert their employers.

Part XII. deals with guarantees required under the Ordinance, Part XIII. with the records of written labour agreements and fees for documents.

**Finance.**—No. 6 authorises the raising of a loan of £3000 to defray the cost of survey of lands in the possession. The money is to be borrowed from the Queensland Government at an interest not exceeding 4 per cent.



**Arms, Liquor, and Opium.**—No. 3(*s*) repeals s. 6 of the Arms, Liquor, and Opium Prohibition Ordinance of 1888, which permitted the issue of permits to bear arms to natives as there defined. It authorises the issue of permits (1) to natives to possess and use firearms (s. 3), or (2) to employers not being natives to provide arms to those of their native servants specified on the permit (s. 4). These permits include use of ammunition (s. 5). Permits may also be issued to persons other than natives allowing the drinking of intoxicating liquor. "If any who are not expressly permitted under this Ordinance to do so shall drink(*t*) or have in his possession any intoxicating liquor, he is liable to fine and in default of payment to imprisonment" (s. 1). Penalties are also imposed on the use or possession without express permission of opium(*u*) or firearms, ammunition or explosives.

**Bankruptcy and Insolvency.**—No. 8 adopts as the law of the possession the Queensland Insolvency Acts of 1874(*x*) and 1876, (*y*) so far as applicable to the circumstances of the possession and are not repugnant to the letters patent constituting the Colony or the royal instructions of the Governor, or to Ordinances, etc., having the force of law in the possession. The Courts are authorised to read the adopted Acts with such verbal alterations as will apply them to the matter before them.

**Public Health.**—No. 9 adopts as the law of the possession the Queensland Health Acts of 1889(*z*) and 1890, (*a*) and extends to the whole possession the provisions of the Queensland Health Act of 1884, already adopted in British New Guinea.

The Administrator in Council is given all the power which in Queensland belonged to the Board of Health or local authority, but may establish sanitary boards, who are given powers of making certain sanitary regulations. Provision is made for defraying the cost of sanitation, and for recovery from owners of the cost of sanitary appliances. Health officers need not be medical practitioners. Under the Queensland law they must.

(*s*) This Ordinance was passed on October 21, 1899, but reserved for her Majesty's consideration. It was assented to by the Queen in Council on January 29, 1900, and the date of the Governor's final assent is given as May 16, 1900.

(*t*) The supply of intoxicants to natives is forbidden, except in cases of urgent necessity, by No. 1 of 1888, ss. 2, 7.

(*u*) The supply of opium to natives, except for medical purposes, is forbidden by ss. 2, 8 of the same Ordinance.

(*x*) 38 Vict. No. 5.

(*y*) 40 Vict. No. 12.

(*z*) 53 Vict. No. 6.

(*a*) 54 Vict. No. 19.

## 1901

## Ordinances passed—2.

No. 1 is an Appropriation Ordinance, and No. 2 adopts as the law of New Guinea the Religious, Educational, and Charitable Institutions Act of 1861, Amendment Act of 1895 of Queensland, (*b*) except s. 2 thereof, and repeals as to deeds of grant, gifts or benefactions (otherwise than by will) made after May 31, 1901, the provisions of the Religious, Educational, and Charitable Institutions Act (of Queensland) of 1861, which Act had been adopted as the law of British New Guinea by Ordinance No. 6 of 1889.

**Constitution.**—By an Order in Council made on March 6, 1902, authority was given to issue letters patent placing British New Guinea under the authority of the Commonwealth of Australia, (*c*) and authorising the Governor-General of the Commonwealth, so soon as the Commonwealth Legislation has made laws for the government of New Guinea, to issue a proclamation declaring that fact. From the date of such proclamation the letters patent of June 8, 1888, (*d*) constituting the possession and Government of New Guinea, are revoked without prejudice to anything done therewards. In the meanwhile the Governor-General is in those letters patent substituted for the Governor.

## 1902

## Ordinances passed—8.

**Customs.**—No. 1 (*e*) amends the Customs Ordinance of 1889 as to the duty on tobacco, now 1s. 6*d.* per lb.

**Probates.**—No. 2 provides for the recognition of probates and letters of administration granted in other parts of the King's dominions.

**Crown Suits.**—No. 5 amends the adopted Crown Remedies Act of 1894 (Queensland) as to the recovery of Crown debts.

**Oaths.**—No. 6 permits a solemn affirmation to be made when it is impracticable to swear a witness in the form and manner required by his religion to make the oath binding.

**Criminal Law.**—No. 7 adopts as the law of the Colony the Criminal Code of Queensland (*f*) as amended by the Queensland Act, (*g*) with the necessary substitutions of references to the "Possession" for references to that State.

**Wreck.**—No. 8 deals with wreck and salvage, and is an adaptation to the needs of the possession of Part IX. of the Imperial Merchant Shipping Act, 1894. (*h*)

(*b*) 59 Vict. No. 4.

(*c*) See s. 122 of the Constitution of Australia Act (63 & 64 Vict. c. 12).

(*d*) "Statutory Rules and Orders Revised," 1904, i. "Australia," p. 65.

(*e*) See *infra*, p. 211.

(*g*) 64 Vict. No. 7. See *supra*, vol. i, p. 509.

(*f*) See *supra*, vol. i, pp. 501-506.

(*h*) 57 & 58 Vict. c. 60.

**Constitution.**—Letters patent (*i*) under the Great Seal, dated March 18, 1902, were issued to provide for the transfer of the possession to the control of the Federal Legislature of Australia. The transfer is to take effect on the proclamation by the Governor-General of Australia that the Commonwealth Parliament has made laws for the possession. After the date of the proclamation the letters patent of June 8, 1888, (*k*) will cease to have effect, and the possession will be governed as a territory of Australia.

## 1903

## Ordinances passed—5.

**Customs.**—Ordinances Nos. 3 and 4 amend former Customs Ordinances of 1889 and 1902 (*l*) by altering the duties on tobacco (No. 4), and on benzine and naphtha (No. 3).

**Land Registry.**—Ordinance No. 5 provides for the appointment of a Registrar of Titles and for transfer to him of the duties of the Registrar-General under the Real Property Ordinance of 1889 and the Land Ordinance of 1899. (*m*)

**Timber Cutting.**—Ordinance No. 2 (*m*<sup>1</sup>) regulates the cutting of indigenous timber and amends the Indigenous Timber Ordinance of 1892.

1904 (*n*)

## Ordinances passed—2.

**Pearl Shell and Bêche de Mer Fisheries.**—Ordinance No. 2 amends the Pearl Shell and Bêche de Mer Fishery Ordinances of 1891, (*o*) 1894, (*p*) and 1897. (*q*) S. 2 prohibits the licensing of a ship or boat for use in these fisheries unless it is wholly owned—

- (1) By natural-born British subjects;
- (2) By persons naturalised by Imperial or colonial legislation;
- (3) By persons made denizens of British New Guinea or the Commonwealth of Australia by letters of denization;
- (4) By bodies corporate established under and subject to the laws of some part of the King's dominions.

Before the licence is granted, the licensing authority must be satisfied that the applicant is qualified to hold it and a declaration must be made, attested, and filed. If any unqualified person acquires any interest

(*i*) Printed in "Statutory Rules and Orders Revised," 1904, p. 63, vol. i. tit. "Australia."

(*k*) See "Statutory Rules and Orders Revised," 1904, vol. i. tit. "Australia," p. 63.

(*l*) See *supra*, p. 210.

(*m*) See *supra*, pp. 206, 207.

(*m*<sup>1</sup>) See *infra*, p. 217.

(*n*) No legislation was passed in 1904 by the Commonwealth Parliament of Australia for the regulation of the territory of British New Guinea.

(*o*) No. 4 of 1891.

(*p*) No. 4 of 1894.

(*q*) No. 4 of 1897.



"either legal or beneficial" in any manner in any licensed ship or boat, the licence forthwith becomes null and void. Provision is made to protect vested interests in vessels legally licensed in 1904, and for registration of owners, etc., of ships, etc., engaged in the fishery and of agreements relating to such vessels.

## 1905

### Ordinances passed—5.

The Papua Act, of 1905, the Commonwealth, <sup>(r)</sup> after reciting the history of British New Guinea, declares its acceptance as a territory under the authority of the Commonwealth by the name of Papua (s. 5). All Ordinances of the possession (or Acts or Statutes of Queensland and all possessions adopted as an Ordinance of the possession), which relate to certain matters, reserved by s. 41, are to be forthwith submitted to the Governor-General in Council, and may be disallowed within three months from submission. Their annulment is to take effect on proclamation or notification in the *Government Gazette*. The Commonwealth laws are not in force in Papua except as specially provided by the Act of 1905 (s. 7).

The Executive Government of the territory is in the Lieutenant-Governor, and there is a Legislative Council consisting of the Lieutenant-Governor, the members of his Executive Council, and of non-official members appointed by the Governor-General, or by the Lieutenant-Governor under his instructions. The number is regulated by the white population of the territory (s. 30).

Ordinances do not become law till assented to by the Lieutenant-Governor (s. 38). They may be disallowed within six months of his assent (s. 39), or vetoed, or reserved (s. 38). Reserved Ordinances have no force unless assented to by the Governor-General within a year of reservation (s. 40). Certain classes of Ordinances may not be assented to unless they contain a clause suspending their operation until the Governor-General's pleasure is known (s. 41).

**Evidence.**—Ordinance No. 2 makes a person accused of an indictable offence and the husband or wife of the accused a competent witness on his or her behalf, but not compellable without his or her consent. Such witness, if called, may be cross-examined like any other witness, but is not compellable to answer any question tending to criminate him or her with respect to any other matter than the offence for which he or she is being tried and on the trial whereof he or she tenders himself or herself as a witness.

**Debtors.**—Ordinance No. 3 gives a plaintiff in certain cases power to obtain an order for the arrest of a debtor on mesne process and for his

(r) No. 9 of 1905. See *supra*, vol. i. p. 430.

detention until bail is given for an amount not exceeding that claimed in the action. (s) It also gives power to make an order in certain cases for the imprisonment of a judgment debtor for a term not exceeding six calendar months which does not operate as satisfaction of the debt. (t) The power arises when—

- (1) The debt was fraudulently contracted ;
- (2) The judgment debtor conceals goods, chattels, valuable securities or other property ;
- (3) The judgment debtor has income, salary, or means to satisfy the judgment ;
- (4) The judgment debtor is about to remove any of his property or to leave British New Guinea with intent to evade payment of the judgment debt. (u)

**Wild Birds.**—Ordinance No. 4 amends the Wild Birds Protection Ordinance of 1894 by allowing the Administrator to issue special permits to destroy or capture birds protected by that Ordinance and to make conditions as to time within the periods to be in force, the places to which they are to apply, and the number of birds which may be taken or destroyed.

**Wireless Telegraphy.**—Ordinance No. 5 gives to the Administrator the privilege of wireless telegraphy in the possession and empowers him to grant licences. (x)

## 1906

### Ordinances passed—10.

By Proclamation of the Governor-General of the Commonwealth of Australia, published on September 1, 1906, the style of the Possession of British New Guinea was altered to that of the Territory of Papua, and the Papua Act, 1905, (y) of the Commonwealth Legislature was brought into operation on September 1, 1906.

Three Ordinances were made in 1906 before this proclamation took effect. Nos. 1 and 3 are Appropriation Ordinances.

**Pearl Buyers.**—No. 2 prohibits the purchase of pearls from aboriginal natives of British New Guinea by persons not having licences granted under the Act. A licence fee of £50 is levied.

Seven Ordinances were made by the Papuan Legislature under the new system of government. Of these, one (No. 10) is an Appropriation Ordinance.

(s) Adapted from Queensland Common Law Process Act, 1867 (31 Vict. No. 4), ss. 48-50.

(t) Taken from Debtors Act, 1869 (32 & 33 Vict. c. 62, s. 5).

(u) Adapted from Queensland District Courts Act, 1867 (31 Vict. No. 30), ss. 92, 93.

(x) Cf. Fiji Ordinance No. 11 of 1903 (*infra*, p. 297) ; Imperial Act, 1904 (4 Edw. VII. c. 24, *supra*, vol. i. p. 122).

(y) See *supra*, vol. i. p. 430.

**Royal Commissioners.**—No. 4 provides machinery for the execution of Commissions of Inquiry issued by the Governor-General of the Australian Commonwealth. A Royal Commission had been issued by the Governor-General on August 27, 1906, to inquire into and report upon the present conditions, including the methods of government, of British New Guinea, and upon the best means for their improvement. The Ordinance empowers the Commissioners to send for witnesses and documents and to examine witnesses on oath or affirmation, imposes penalties for refusal to attend or to produce documents or to be sworn or give evidence and for false evidence.

**Lands.**—No. 5, which repeals the Land Ordinance, 1899, (2) regulates dealings with lands in Papua under s. 41 of the Papua Act, 1905. (a) It was reserved for the pleasure of the Governor-General and was assented to on November 13, 1906. (b) Save as specially provided in the Ordinance, natives are denied power to sell, lease, or otherwise deal with or dispose of lands, and their contracts to do any of these things are void (s. 3). The prohibition does not apply to natives who by will or intestacy have acquired land alienated by the Crown; but their contracts dealing with such land are not valid unless approved by the Curator of Intestate Estates (s. 4). The Crown may lease or purchase lands from natives (s. 5); the documents of lease or purchase must be authenticated in a manner to be prescribed (s. 6). The Crown may also lease or repurchase land the subject of a Crown grant (s. 7), and may take possession of waste or vacant land (s. 8). The fee simple of Crown lands may not be sold; and the longest interest which may be created is a lease for ninety-nine years, reserving all minerals except coal (s. 9). Except for temporary purposes or by virtue of some right or possession under this or some other Ordinance, only natives may occupy land owned by natives, and no person may occupy Crown land (s. 9).

Large powers are given as to the reservation from lease of land which is or may be required for certain specified purposes, including defence, quays and harbours, means of communication, camping-places for travelling stock, and reservoirs, markets, schools and places of non-scholastic instruction, public recreation and for cemeteries (s. 32).

For the first five of these purposes the Lieutenant-Governor may by notice gazetted acquire or reserve land on paying full compensation to be assessed in manner to be provided by regulations (s. 33).

**Quarantine.**—Ordinance No. 7 amends the law of quarantine, which rests on the adopted Queensland Quarantine Act of 1886.

The Ordinance requires vessels arriving from beyond the Territory to hoist a blue flag known as the visiting flag (s. 3); until pratique has

(2) See *supra*, p. 206.

(a) See *supra*, p. 212.

(b) *Papua Gazette*, December 18, 1906.



been granted the vessel may not communicate with the shore, nor may any one go alongside except the pilot and the health officer (ss. 1, 3).

Special regulations may be made as to vessels arriving at Woodlark Island and proceeding to a port in Papua (s. 4). (c)

Quarantine when ordered is performed at the quarantine ground (d) or such other place as the health officer directs (s. 2). Power is given to mitigate the penalties for breach of the provisions of the Act of 1886 (s. 5).

**Inflammable Oils.**—Ordinance No. 8 amends the Queensland Navigation Act of 1876 as adopted (e) by declaring that the term "explosive" in Part VII. thereof shall be construed to include naphtha, kerosene, and all other inflammable oils (s. 1). The amended definition does not apply to ss. 171 and 172 of the Act of 1876. The penalty under s. 164 as to explosives other than gunpowder is altered to a fine not exceeding £20, or in default of payment imprisonment with or without hard labour for not over three months (s. 4).

**Criminal Law.**—Ordinance No. 9 amends s. 664 of the Queensland Criminal Code, 1899, (f) as adopted for the Territory, by allowing the administration to prescribe whether sentence of death is to be executed within or without a prison. (g)

## 1907

### Ordinances passed—15. (h)

The Ordinances passed for Papua in 1906–1907, after it was taken over as a territory of the Commonwealth of Australia, were published in 1908 as a Commonwealth Parliamentary Paper (No. 168).

Papuan legislation under the new regime seems to be tentative. Two of the Ordinances passed in 1907 were repealed by other later Ordinances of the same year. (i)

**Postal and Telegraph Services.**—No. 5 repeals as to the Territory the adopted Queensland Act (k) and adopts the Commonwealth Post and Telegraph Act, 1901, (l) with certain exceptions and modifications, the chief of which relates to money orders and postal notes, whether for Australasia or the rest of the British Empire (s. 5).

(c) The regulations were published in the *Papua Gazette* of January 19, 1907.

(d) Viz. Port Moresby and Samarai. See regulations gazetted December 21, 1906.

(e) The chief Ordinance regulating the adoption of Queensland Acts in British New Guinea is No. 4 of 1888.

(f) 63 Vict. No. 9, see *supra*, vol. i. pp. 501–506.

(g) See *Papua Gazette*, January 19, 1907, p. 3.

(h) One (No. 12), relating to an armed constabulary, was reserved for the assent of the Governor-General in Council, which was not given in 1907.

(i) No. 3 (Native Children), repealed by No. 13 (*infra*); No. 4 (Sandalwood, etc.), repealed by No. 14 (*infra*).

(k) 55 Vict. No. 15.

(l) See *supra*, vol. i. pp. 409, 410.

**Public Service.**—No. 2 empowers the Lieutenant-Governor, with the advice of the Executive Council, to make rules and regulations for the good order and conduct of the public service of the Territory, *e.g.* creation, abolition, and functions of departments, the classification, grading, and salaries and duties of officers. The rules, when gazetted, are to have the force of law.

**Juries.**—No. 7 declares that issues, whether civil or criminal, shall be tried without a jury except when a person of European descent (*m*) is charged with a crime punishable with death. It regulates also the qualifications of jurors, the making of jury lists, the summoning of jurors, the formation, expenses, separation, and discharge of the jury. (*n*)

**Criminal Code.**—No. 4 amends the Queensland Criminal Code, as adopted for the Territory. (*o*)

The amendment consists (1) in making murder, as defined in s. 302 of the Code, punishable by imprisonment with hard labour for life instead of death; (2) in repealing s. 305 of the Code as to murder; (3) in empowering the Court to direct sentence of death to be recorded in any case in which the Court in a capital case consider that the offender should be recommended to the Royal mercy. (*p*)

Under the above Code "murder" corresponds to murder in the second degree, as distinguished from "wilful murder" or murder in the first degree.

**Native Labour.**—Two Ordinances (Nos. 1 and 11) deal with native labour.

"The Native Labour Ordinance of 1906" (*q*) repeals and re-enacts with modifications the Ordinance of 1900. (*r*)

The Ordinance prohibits the removal of a native from Papua temporarily or permanently, except under permit in the case of certain contracts of service in fishing-boats, or as a seaman or personal attendant (ss. 8, 36). This is modified by Ordinance No. 11, which allows removal by permit of the Lieutenant-Governor with the advice of the Executive Council in cases not within the principal Act.

Natives may not be removed more than forty miles from their homes except in settled districts, in which case the limit is a hundred miles (s. 8 (2)).

(*m*) *I.e.* "unmixed" European descent (s. 2).

(*n*) Where other provision is not made the Queensland rules as to jury trial apply (s. 14).

(*o*) By Ordinance No. 7 of 1902, *supra*, p. 210.

(*p*) This clause is in substance the same as the Imperial Act (4 Geo. IV. c. 48), but includes murder. See Archb. Cr. Pl. (23rd ed.), 233.

(*q*) No. 1 of 1907. Passed September 27, 1906. Reserved and assented to by the Governor-General in Council, March 5, 1907.

(*r*) See *supra*, pp. 207, 208.

The recruiting of natives as labourers is conducted under licence and supervision, and contracts of service for over three months must be in writing entered into before a magistrate (ss. 20, 23). No contract may be for more than three years, and in the cases of miners and carriers the limit is eighteen months (s. 24). The Ordinance contains detailed provisions as to ascertaining the fairness of a contract before concluding it—and as to the time and place of paying wages, the return of the labourer to his home, and reports as to death or desertion.

Deserting labourers are liable to be recaptured, punished and returned to their employers (ss. 61–64).

A native woman may not be employed on board any vessel, nor be carried as a passenger therein unless accompanied by her “husband or other natural protector” (ss. 10, 35).

**Native Children.**—No. 13 (which repeals No. 7) amends the Native Children Custody and Reformation Ordinance (No. 2 of 1891). It extends that Ordinance to children only one of whose parents is a native within the meaning of the Native Board Ordinance of 1889, and authorises the issue of mandates by a resident magistrate in the case (1) of a child either of whose parents is in gaol under a sentence of imprisonment of twelve months or more; (2) of a child deserted by either parent or either of whose parents is dead. The mandate is not issued unless the magistrate is satisfied that the child is neglected or insufficiently cared for.

**Sandalwood and Rubber.**—No. 14 (which repeals No. 8) regulates (1) the cutting of sandalwood or its purchase from the natives, or (2) the collection of tree rubber, or its purchase from natives, or the sapping or cutting of indigenous rubber-producing trees.

For such cutting, etc., by a person who is not a native (*s*) a licence is necessary, except in the case of cutting on land lawfully occupied by him under a local Ordinance. Licences are granted and renewable at discretion and not as of right, and by magistrates or other authorised persons, for eight or twelve months at a fee calculated at the rate of £2 per acre. Destruction of indigenous rubber-trees, whether wilful or by careless tapping, is made punishable unless the tree is on land in the lawful occupation of the persons injuring (*s*. 7).

The Ordinance is supplementary to others dealing with Indigenous Timber. (*t*)

**Animals.**—Ordinance No. 15 prohibits absolutely the introduction of rabbits, foxes, hares, and monkeys (*s*. 2), and the introduction of any non-domestic animals without the consent in writing of the

(*s*) Native includes persons partly by Papuan descent (*s*. 1).

(*t*) No. 7 of 1892 and No. 2 of 1903, *supra*, p. 211.



Lieutenant-Governor (s. 3). He may also, by gazetted proclamation, prohibit the introduction of any animal or animals, or any animal or animals from certain places whose introduction would in his opinion be injurious to Papua (s. 6). The penalty for infringing the Ordinance or proclamations or regulations under it is by fine not exceeding £500, or, in the alternative, imprisonment not exceeding six months.

## II. DOMINION OF NEW ZEALAND.

1898 (a) Acts passed—Public 42, Local and Personal 26, and  
Private 2.

**Unclaimed Moneys** (No. 4). (b)—The Unclaimed Moneys Act is designed to give publicity to information relating to “unclaimed moneys,” meaning by that expression all principal and interest money, and all unforfeited dividends, bonuses, profits and sums of money owing to any person, in the possession of any company for a period of six years after the same have become payable. The machinery employed is to require the company to enter the unclaimed money in an alphabetical register, in a form scheduled to the Act, which is to be open to public inspection for a fee of two shillings. A copy of the register is also to be published annually in the *New Zealand Government Gazette*, and notice posted to the persons listed, at their last-known place of residence (s. 4). If unclaimed for two years after publication in the *Gazette*, the moneys are to be paid to the credit of the Colonial Treasurer (s. 6). The Treasurer may require production by the company of any books referring to such moneys (s. 7).

**First Offenders' Probation Act** (No. 5).—This amends the principal Act of 1886 by requiring the probation officer, where he does not recommend placing the offender under probation, to state fully and in writing the grounds of his refusal.

**Institutions for Inebriates** (No. 8).—The Inebriates' Institutions Act empowers the Governor in Council to establish institutions for inebriates—an inebriate being defined as a person who is, “by reason of the habitual use in excess of intoxicating liquor or drugs, at times dangerous to himself or to others, or incapable of managing himself and his affairs.”

Inebriates may themselves apply for admission (s. 6), or a husband or wife or relation or friend may do so (s. 7). The application is to any judge of the Supreme or district courts, or a stipendiary magistrate. Any stipendiary magistrate may also, upon proof made to him that any

(a) Contributed by Edward Manson, Esq.

(b) See *infra*, p. 251.

person is addicted to the habitual use in excess of intoxicating liquor or drugs, summon such person to appear before him on a day named, or if such person be present on the occasion when such proof is made, thereupon call upon him to show cause why he should not be committed to an institution for inebriates (s. 9). Patients wilfully refusing to conform to the regulations of the institution are liable to a penalty.

**Native Lands Laws** (No. 11).—The object of this Act is to resolve doubts which had arisen as to the payment of stamp duty on conveyances of native land by way of trust under s. 3 of the principal Act. Duty is to be payable on a conveyance to any person other than a native.

**Water Supply** (No. 12).—The machinery of the Water Supply Act, 1891, is amended in several particulars—*e.g.* as to water-race districts, the control and management of water-races, and the hypothecation of debentures.

**Old-Age Pensions** (No. 14). (*c*)—S. 7 of the Act begins by declaring that “subject to the provisions of this Act every person of the full age of sixty-five years or upwards shall, whilst in the Colony, be entitled to a pension,” the amount of which is to be £18 a year (s. 9); but this is qualified by a number of conditions (s. 8 [1] to [10]). The claimant must be residing in the Colony at the date of his claim, and must have so resided continuously for not less than twenty-five years immediately preceding such date, must not for the past preceding twelve years have been imprisoned, must not have deserted his wife or neglected to maintain his children, must be of good moral character, having led for the five past years a sober and reputable life, and finally, must not have an income of more than £52. For the purposes of the scheme the Colony is divided into districts, each district having a deputy-registrar working under a registrar for the general administration of the Act. A claimant must lodge his pension claim with the district registrar, verified by a statutory declaration (s. 15), which must be corroborated, and it is then investigated in open court by a stipendiary magistrate of the district (s. 18), who can take evidence (s. 19), and may either admit, reject or adjourn it. No pension claim is to be admitted unless the evidence of the claimant is corroborated on all material points (s. 20). If admitted, the deputy-registrar issues a “pension certificate.” The pension is payable in monthly instalments at the post-office money-order office named in the pension certificate (s. 36). Drunkenness on the part of the pensioner, or any offence punishable with a month’s imprisonment, may be a ground for the convicting court forfeiting future instalments of the pension, or, if the pensioner is a habitual drunkard, cancelling the pension certificate (s. 49).



The funds are to be provided by the Colonial Treasurer paying whatever is necessary to meet the instalments of pension out of the consolidated fund into the post office account (s. 58).

By s. 62 the Colonial Treasurer is to lay before Parliament each year a statement of the number of pensioners and the amount paid under the Act.

**Shearers' Accommodation** (No. 15).—The wool exported from the Colony in 1897 was of the value of £4,443,144. This gives some idea of the sheep-shearing industry. The above Act deals with the providing of proper accommodation for the shearers; that is to say, all employees in or about shearing-sheds. Inspectors are to be appointed and to visit all shearing-sheds not later than March 31st, and to report to the Minister of Labour. Two hundred and forty cubic feet of space for each shearer is the minimum. If the accommodation is inadequate, a stipendiary magistrate may order better to be provided. Separate sleeping accommodation is to be provided for Chinese employees.

**Slander: Imputation of Unchastity** (No. 16).—The old common-law doctrine of England, the growth of a rude state of society, allowed a license of speech which is repugnant to modern taste. Words imputing unchastity to women were not actionable without proof of special damage. This anomaly was abolished in England by the Act of 1896. The Colony has now passed a similar Act, providing that words spoken and published after the passing of the Act which impute unchastity or adultery to any woman or girl, shall not require special damage to render them actionable.

**Government Loans to Local Bodies** (No. 18).—This Act amends the principal Act of 1886, and sanctions loans to local authorities for purposes of irrigation, water supply, or water conservation; but limits the total amount of all loans to any one local authority in any financial year to £100,000.

**Inspection of Dairies** (No. 22).—The growth of the dairy produce trade in the Colony is discernible in this Act, which regulates very minutely the inspection of dairies, and the manufacture, inspection, sale, and export of dairy produce, and also authorises Government advances to dairy companies. S. 6 provides for the appointment of inspectors and analysts, who may at all reasonable times enter and inspect any dairy, stock, or utensils, and take samples (s. 8), and if he finds any want of cleanliness or any disease, he may require the defects to be remedied and order the diseased stock to be kept separate (s. 12). There are special provisions as to not keeping pigs, manure-heaps, cesspools, or fowl-houses in proximity to a dairy (ss. 15, 16).

Dairy produce is not to be sold if infected, or unless marked

with the true weight (s. 18); nor to be adulterated (s. 19). Milk in particular is not to be stored in a room used for domestic purposes.

*Export of Dairy Produce.*—The Governor may by Order in Council appoint particular ports for export and buildings for storage (s. 25); and no dairy produce is to be shipped unless in good condition and free from disease.

*Regulations.*—By Order in Council regulations may be made for registration of dairies, of marks and brands, for sterilisation of dairy produce, preventing pollution of water, etc. (s. 28).

*Government Loans.*—Ss. 30 and 31 authorise advances by Government to dairy companies for acquisition of land, buildings, or plant (s. 32); but such advances are not to exceed in one year £30,000 (s. 31). The amount of any particular loan is in no case to exceed £2000, and is to be repayable in instalments extending over not more than fifteen years.

**Kauri-Gum Industry** (No. 23). (*d*)—Kauri-gum is a resinous gum which exudes from the Kauri pine. The object of the present Act is to organise the industry, and it does so by dividing the north island of the Colony into Kauri-gum districts, creating Kauri-gum reserves, and authorising the local authorities of the district to issue Kauri-gum-digging licences. The fee for a licence is five shillings.

**Pharmacy** (No. 25). (*e*)—This Act constitutes the Pharmaceutical Society of New Zealand, managed by the Pharmacy Board of New Zealand, consisting of ten members. The Board is to keep a register of all persons duly qualified as pharmaceutical chemists (s. 20), and each chemist so registered is to be entitled to a certificate (s. 21). Ss. 27 and 30 define the qualifications for registration, including any one who holds a certificate or diploma of competency as a pharmaceutical chemist or as a chemist and druggist from the Pharmaceutical Society of Great Britain or of Ireland.

*Enrolled Managers.*—A friendly society or a company or the proprietor of a shop may carry on a pharmaceutical business by an “enrolled manager,” provided he is a registered chemist (s. 32). A roll of such managers is to be kept (s. 33).

**Carrier Pigeons** (No. 26).—This Act imposes a penalty on any person intentionally or negligently shooting or injuring any homing pigeon, but only if the owner has registered such pigeons with the chief postmaster of the district (s. 4). The effect of registration is to place the pigeons at the disposal of the Government of the Colony when the exigencies of the public service require it.

**Mining** (No. 27).—This Act exempts companies, whose business

(*d*) See *infra*, p. 228.

(*e*) See *infra*, p. 229.

in New Zealand is confined exclusively to mining operations, from duty under the Stamp Act, 1882.

**Rabbits and Wire-Netting** (No. 29).—This is an attempt to deal with the rabbit nuisance. The scheme of the Act is to create districts, each with a board of trustees, who are empowered (s. 14) to do all such things as it thinks to insure the destruction of rabbits—*e.g.* by offering rewards for their destruction and paying for the erection of rabbit-proof fences. The erection of such rabbit-proof wire-netting is by s. 23 made a public work, for which loans may be made by the Government.

**Drainage of Agricultural and Pastoral Land** (No. 30).—This Act is to extend to local authorities the powers as to draining and removal of weeds conferred by the Land Drainage Amendment Act, 1894.

**Diseased Stock: Compensation for Slaughter** (No. 31).—This Act provides for compensation in cases where an inspector condemns any stock to be destroyed as diseased (s. 2). The compensation is to be based on the fair market value of the animal (s. 3). The Act also provides for the appointing of a special inspector of slaughter-houses (s. 12).

**Solicitors** (No. 34).—By this Act a solicitor of the Supreme Court of the Colony is to be entitled to be admitted and enrolled and to practise as a barrister on application to a judge, if the judge is satisfied that the applicant is of good character, and has for at least five years continuously next preceding the date of application been in active practice as a solicitor or as a managing clerk to a solicitor, and has himself been a solicitor during such period.

**Juries** (No. 35).—*Exemptions*.—The law relating to juries was very fully defined by the Juries Act, 1880. Further experience has shown the necessity of revising the list of exemptions by adding to it engineers in charge of districts, station-masters, signalmen, and other railway officials and shop managers (s. 5). Power is also given to the sheriff to amend the jury list of his own knowledge (s. 6).

*Challenge by Crown*.—On the trial of all criminal cases and of all civil cases to which the Queen is a party there is to be the same right of challenge on behalf of the Queen as any prisoner or party now by law possesses (s. 10).

*Maori Jury*.—In criminal cases of Maori against Maori the alleged offender may claim to be tried by a Maori jury.

*Juries Disagreeing*.—Where jurors cannot agree the judge is now empowered to discharge them, after waiting "such periods as the judge thinks reasonable, being not less than four hours."

**Mining** (No. 38).(*f*)—This is a very elaborate Act, consolidating

(*f*) See *infra*, p. 229, and Compilation Act, No. 39 of 1905, *infra*, p. 271.



and amending the law relating to mining other than coal-mining. The Act is divided into ten parts: Part I., Preliminary. Part II., Districts and appointments. Part III., Lands subject to the Act and lands exempted. Part IV., Mining privileges. Part V., Working regulation, and inspection of mines. Part VI., Registration of appliances and processes for treating ores. Part VII., Compensation. Part VIII., Mining partnerships. Part IX., Administration of justice. Part X., Miscellaneous provisions.

*Mining Districts.*—By Part II. the Governor may by proclamation constitute any portion of the Colony a mining district presided over by a Warden's Court, including a staff of mining registrars, receivers of gold revenue, clerks, bailiffs, etc. (ss. 10–12). No officer of the Crown is to have any pecuniary interest whatever in any mining privilege in the district (s. 16).

*Lands.*—By Part III. all Crown lands within any mining district are declared open for mining (s. 18). The Governor may by notice in the *Gazette* set apart any Crown lands for mining or may exempt them (s. 20). A native land court may declare native land open for prospecting or ceded for mining purposes. Leases of unalienated Crown lands may be granted by the warden with the approval of the Minister of Lands.

*Miners' Rights.*—By Part IV., a document called “a miner's right” may be issued to any person at a fee of 20s. or 10s., according as the land is native or not, entitling him to prospect for gold or any other mineral, to take one ordinary alluvial claim, to sue in the Warden's Court, etc. Prospecting is regulated by ss. 66–74, claims by ss. 75–89, water-races and other water privileges by ss. 91–116.

*Regulation of Mines.*—Part V. provides for a board to conduct the examination of applicants for certificates as mine managers or balking superintendents; for the drainage of mines (ss. 200–205), for the safety of life and property therein (ss. 206, 207), as to plans and inspection of mines (ss. 207–213 and 220–222), and as to accidents (ss. 214–219).

*Registration of Appliances.*—Part VI. provides for registration of machines for “treating” ore, and for returns for all ore and metals treated.

*Compensation.*—Part VII. deals with compensation for the value of improvements, the taking of land, the injury to land or to riparian rights.

*Mining Partnerships.*—These do not include companies. Whenever two or more persons acquire any mining privilege, or engage in lawfully using or working it, or jointly employ others to do so for them, a mining partnership is to be deemed to exist between such persons whether there is or is not any express agreement to become partners.

*Administration of Justice.*—Part IX. deals with the Warden's Court, defines its jurisdiction, and prescribes the mode of procedure.

*Miscellaneous Provisions.*—Part X. is principally devoted to specifying the purposes for which the Governor may make regulations.

**Crown Lands** (No. 39).—This Act makes provision for the exchange, sale, reservation, and other disposition of certain Crown lands, reserves, and endowments, and for the investigation and settlement of certain matters relating to native and other lands.

**Industrial Arbitration** (No. 40).—The Industrial Conciliation and Arbitration Act, 1894, was designed to encourage the formation of industrial unions and associations, and to facilitate the settlement of industrial disputes by conciliation and arbitration; and it created for this purpose a Court of Arbitration consisting of three members. It is somewhat significant that the present Act amends the principal Act by striking out from its title the words "to encourage the formation of industrial unions and associations." The other amendments relate chiefly to enforcing awards (s. 8) and industrial agreements (s. 9), and to securing that industrial disputes shall not be referred to the Board of Arbitration except in pursuance of a resolution of a majority of the union (s. 5). Jurisdiction is also given to the Court to deal summarily with offences against the principal Act.

**Divorce.** (No. 42). (*g*).—*Grounds for Dissolution.*—This Act introduces some striking innovations into the law. A spouse domiciled for two years in the Colony may obtain a dissolution of the marriage on the ground of the respondent's (1) adultery; (2) wilful desertion without just cause; (3) four years' habitual drunkenness, and (if a husband) neglect or cruelty to his wife, (if a wife) neglect of her domestic duties; (4) conviction and sentence to seven years' imprisonment or penal servitude for attempting to take the life of the petitioner. If the petitioner's own habits or conduct have contributed to the wrong, the Court may dismiss the petition.

*Domicil.*—A deserted wife domiciled in the Colony at the time of the desertion shall be deemed to have retained her domicile (s. 3).

The Attorney-General or Solicitor-General may oppose a petition (s. 6).

*Intervention for Collusion.*—The decree is in the first instance to be a decree *nisi* only, and not to be made absolute for three months, during which time the Attorney-General or Solicitor-General may intervene for collusion (s. 7).

*Alimony.*—On a decree for dissolution the Court may, if a husband has no property on which the payment of any gross or annual sum can be secured to the wife, make an order for payment to the wife

(*g*) Consolidated in No. 18 of 1904, *infra*, p. 266.

of such monthly or weekly sums for her maintenance as the Court may think reasonable.

*Right to Marry again.*—In cases where there is no right of appeal, the parties respectively are to be at liberty to marry again at any time after the pronouncing or issue of the decree absolute (s. 10).

*Fraudulent Deeds.*—Any fraudulent deeds or conveyances designed to defeat a petitioner's claim to damages, alimony, costs, etc., may be set aside by the Court (s. 13).

A sale of land to defeat a petitioner may be restrained (s. 14).

*Restitution of Conjugal Rights.*—No decree for this purpose is hereafter to be enforced by attachment, but the Court may in lieu of attachment make an order for periodical payments (s. 15).

No compliance with a decree is to be deemed desertion (s. 17).

*Custody of Children.*—The Court may before or after final decree make any order as to this, which it might have made by interim orders during the pendency of a trial for judicial separation between the same parties.

*Hearing "in Camera."*—Any suit or proceeding may in the Court's discretion be heard in chambers. The Court may also, whether the proceedings are in court or chambers, prohibit publication of any report of the evidence (s. 22).

*Judicial Separation: Femme-Sole.*—After decree for a judicial separation a wife is to be considered a *femme-sole* (s. 26).

**1899** (*h*) Acts passed—Public, 33; Local and Personal, 28;  
Private, 3.

**Public Works** (No. 5).—This Act authorises the raising of £1,000,000 by debentures, script, or inscribed stock charged on the public revenue of the Colony. The works and purposes to which this sum is to be applied are—

(1) The construction of various railways; (2) Land settlement and goldfields development; (3) Public and technical school buildings; (4) Purchase of native lands; (5) Contingent harbour defence.

**Land Settlement** (No. 6).—This is a contribution to the difficult subject of the housing of the working classes in urban districts. For the purposes of providing workmen's houses or workmen's villages, land may, under the Act, be compulsorily taken within a borough having a population of not less than fifteen thousand inhabitants according to the latest census returns, or within a radius of fifteen miles from the boundary thereof.

Not more than one hundred acres is to be taken in one year, and

(*h*) Contributed by Edward Manson, Esq.



the owner is to have the right to retain an area of not more than ten acres, if such area is within such borough, or fifty acres in any other case.

No land is to be taken compulsorily for such workmen's houses until after tenders have been called for land suitable for the purpose, nor until, in the opinion of the Land Purchase Board, all other means of obtaining suitable land have been exhausted.

**Intoxicating Liquors (No. 8).**—The sale of alcoholic liquors in the Colony is controlled—under the Act of 1895—by local option, the vote of the electors of the district determining what number of licences shall be allowed.

The object of the present Act is to secure that the polls shall be properly conducted. For this purpose the Act provides that any ten electors who are in favour of the proposal that no licences be granted in the district may nominate any two specified persons to appoint one scrutineer to act at each ballot-box in the district, in the interest of all electors who are in favour of that proposal. Any ten electors who are against the proposal may do the same. The returning officer is then to select two fit persons on each side to appoint a scrutineer to act at each ballot-box in the respective interests.

**Police Provident Fund (No. 10).**—This Act embodies a provident scheme for the police force of the Colony. A fund is created from, *inter alia*, moneys paid into the Police Reward Fund, and the contributions of members of the force deducted from their pay according to a graduated scale, the percentage for a member under thirty years of age being 5 per cent., under forty 6½ per cent., and so on. The fund is administered by a board for the benefit of members of the force retiring as medically unfit or on account of age. If a member dies from injuries received in the execution of his duty, an allowance may be made to the widow and children (£18 a year to the widow, and 5s. a week for each child till fourteen). Life allowances may be forfeited if the recipient is convicted of a crime or becomes the associate of thieves or persons of bad repute. Members who have already insured their lives according to departmental rules may elect to be exempted from the Act.

**Factories: Payment of Boys and Girls (No. 11).**—This Act furnishes a fresh illustration of the solicitude of modern law to protect children. The object in the present case is to secure that boys and girls employed in factories shall be paid for their work, and to prevent an illusory payment the Act fixes a minimum wage of 5s. per week for boys, and 4s. for girls, payable weekly, or at agreed intervals not longer than a fortnight. An employer making default for fourteen days in full and punctual payment is liable to a penalty for every day the default continues. The penalty may be recovered by an inspector of factories.

To prevent the policy of the Act being defeated by a premium being exacted, the Act provides that no premium is to be paid by any boy or girl for employment in a factory or accepted by any factory.

**Wages Protection** (No. 12).—A practice appears to have grown up in the Colony of employers taking out accident insurance policies to insure their workmen against accident and themselves against liability, and compelling their workmen to contribute as premium for such insurance sums at a rate proportionate to their wages. This Act is designed to defeat this practice, and makes it unlawful for any employer to directly or indirectly take or receive any money from any worker in his employ, whether by way of deduction from wages or otherwise howsoever, in respect of any policy of insurance against injury by accident. Insurance companies are similarly prohibited from taking from a worker money in respect of a policy to indemnify the employer. Money so taken from any worker is to be recoverable from the employer or company, with full costs of suit; and the consent of the worker is no defence.

**Jurors : Payment** (No. 14).—Jurors under the Juries Act, 1880, of the Colony are already entitled to be paid in civil cases—special jurors, 20s. for the first day, 10s. for subsequent days; common jurors, 10s. By this Act every juror who attends at any sittings of the Supreme Court or the district court at which criminal cases are tried is entitled to be paid the sum of 8s. a day if he attends for more than four hours in the day; if for less, 4s. Jurors on inquests are to be entitled to the same. The money is to be paid from the Consolidated Fund.

**Shipping** (No. 15). (i)—This Act makes special provisions for ships propelled by gas, oil, fluid, electricity, or other mechanical power than steam. They must have the prescribed number of engineers certificated as competent to take charge of engines so driven, and the Minister is empowered to make regulations, among other things, for the examination of candidates for such certificates.

**Settlers : Government Advances** (No. 16). (k)—In order to encourage punctual payment by settlers who have received Government advances of instalments of principal and interest, this Act allows on payment of such instalment within fourteen days after it is due a rebate reducing the interest from 5 to 4½ per cent. Loans may also be readjusted when part repaid. Advances may be made on urban and suburban lands, subject to special provisions.

**Kauri-Gum** (No. 18).—This amends the Kauri-Gum Industry Act, 1898. (l) No one is entitled to dig on any Kauri-gum reserve unless he is the holder of a special licence under the Act, and is a British subject by birth or naturalisation or a native of the Maori race.

(i) Repealed by No. 96 of 1903, *infra*, p. 265.

(k) Consolidated in No. 19 of 1906, *infra*, p. 277.

(l) See *supra*, p. 222.

**Pacific Telegraph Cable** (No. 19).<sup>(m)</sup>—This Act authorises the Governor in Council to give effect to certain resolutions as to the construction of a Pacific telegraph cable, subject to conditions.

**Government Accident Insurance** (No. 20).—Under the Life Insurance Acts of the Colony the Government carries on the business of life insurance. The present Act authorises the Government to undertake accident insurance business as a branch of its insurance business, and formulates a scheme for raising funds for the purpose.

**Drugs** (No. 22).—The Pharmacy Act, 1898,<sup>(n)</sup> entitles certain persons to be registered as pharmaceutical chemists without examination. This Act provides that the exemption is only to apply to a person who was at the date of the Act, as owner or manager, keeping open a shop in New Zealand as a dispensing or homœopathic chemist.

**Trustees** (No. 24).—This Act enables a trustee of real or personal property in New Zealand who is residing out of the Colony or leaving it to delegate his powers to any person residing in New Zealand, and provides for the retirement of trustees and the appointment of new trustees.

**Mining** (No. 29).<sup>(o)</sup>—This is a long Act regulating a variety of matters in connection with mining, antedated miners' rights, applications for claims, business site licences, water-races, certificates of easement, surrenders for exchange of title, timber-cutting rights, tribute agreements, protection of bridges and railways, public roads, and other miscellaneous matters.

**Native Land** (No. 30).—This Act enables a native owner of land to mortgage it as effectually as a European. Native land is not, after the commencement of the Act, to be alienated to the Crown by way of sale.

**Immigration: "The Prohibited Immigrant"** (No. 33).<sup>(p)</sup>—The present Act prohibits from landing in New Zealand any person—

(1) Other than of British (including Irish) birth and parentage who fails to write out in any European language a statutory form of application; or

(2) Who is an idiot or insane; or

(3) Suffering from a contagious disease which is loathsome or dangerous; or

(4) Has within the previous two years been convicted in any country of any offence involving moral turpitude which, if committed in New Zealand, would be punishable by imprisonment for two years or upwards, not being a mere political offence. Shipwrecked persons are

<sup>(m)</sup> See *infra*, p. 235.

<sup>(n)</sup> See *supra*, p. 222.

<sup>(o)</sup> See *infra*, p. 241, and since included in a Compilation Act, No. 39 of 1905, *infra*, p. 271.

<sup>(p)</sup> See *infra*, p. 282.



exempted, as are persons with a certificate signed by the Colonial Secretary, her Majesty's land and sea forces, etc.

A person appearing to be a prohibited immigrant, but not coming within the above sub-sections (2), (3), (4), may land on depositing £100 as security, which is forfeitable to her Majesty if he proves to be a prohibited immigrant. The master and owner of a vessel landing a prohibited immigrant are also jointly and severally liable to a penalty of £100 for each such immigrant, and also to the expense of his removal. Vessels may be detained until all penalties have been satisfied.

**1900** (q) Acts passed—Public, 73; Local and Personal, 34; Private, 3.

Though the volume of Acts for 1900 contains many striking new departures in legislation, its bulk is chiefly due to the number of consolidating Acts. These in all cases deal with the powers and duties of public authorities. It is to be noted also that the conferring on the Governor of powers to make regulations is extremely frequent. In the matter of draftsmanship the frequency of the provision that such and such provisions in regard to one matter shall "apply *mutatis mutandis*" to another is worth remark.

**Bubonic Plague Prevention** (No. 1).—This is an Act conferring on the Governor powers for dealing with the bubonic plague in any area that he may gazette for the purpose. The power given him is, in fact, to do anything that he, in his absolute discretion, may think fit for dealing with the plague; the safeguard against abuse is that the Act expires ten days after the then session of Parliament. There is no provision for compensation for property destroyed or seized; it would appear, therefore, that the giving of such compensation was not contemplated, unless the Governor deemed this essential for the purpose of getting his order enforced.

**Lunatics Act Amendment** (No. 4).—This Act amends the provisions of the Lunatics Act, 1882, in regard to the appointment of the Public Trustee to be committee of the estate of a lunatic, so found by inquisition. The Public Trustee is always to be so appointed in form, but another person may be appointed to exercise all or any of the committee's powers.

**Public Contracts: Fair Wages and Working Hours** (No. 5).—A contractor under Government or under any local authority who employs "manual labour," skilled or unskilled, is to be deemed to have agreed with his workers to observe such length for the working day and to pay such rates and wages "as are generally considered in the locality

to be usual and fair for the description of labour to which they relate," but he may contract for a shorter day or higher wages. Such length must not be greater, nor such rates lower, than those under any award or order of the Court of Arbitration (*r*) then in force in the district for similar workers and work, nor shall such length (exclusive of overtime) exceed eight hours. These provisions are to be deemed incorporated in the contractor's contract with the Government or local authority. The worker cannot contract out. There is a penalty on the employer for "breach of the provisions of this Act."

**Weights and Measures Act Amendment (No. 7).**(*s*)—This Act provides for the annual testing of public weigh-bridges, and authorises the Governor to make regulations as to the material of which weights and measures shall be made and the manner in which they shall be stamped.

**Ministers' Salaries and Allowances (No. 8).**—This Act provides for the salary of a new Minister, the Minister of Railways, and raises the salaries of the previously existing Ministers above the amounts fixed in 1887, but not to the amounts which obtained from 1873 to 1887. The amounts now are: £1600 for the Prime Minister, £1300 for the Minister of Railways, £1000 for each of the other Ministers.

**British Investors in New Zealand Government Securities (No. 9).**—This is an Act passed, in view of intended Imperial legislation, to facilitate investment of trust funds in the United Kingdom in Colonial Government securities. It authorises payment in certain cases by the Colonial Treasurer upon the judgment of a Court in the United Kingdom. S. 5 declares that if any future Act of the New Zealand Parliament seems to the Imperial Government prejudicial to the rights or remedies of holders of New Zealand Government Stock, "then that Act may properly be disallowed by her Majesty." It is unnecessary to point out the singularity, from the point of view of constitutional law, of this declaration; its real significance is no doubt that of an emphatic expression of desire to meet the views of the Imperial Government in this matter.

**Noxious Weeds (No. 10).**—This Act prohibits under penalty the sowing or sale of certain "noxious seeds," or of grain or seed which has not been thoroughly dressed to remove all noxious seeds. It requires for the same purpose thorough cleaning of threshing machines, etc., when moved from one farm to another. It imposes on occupiers of land strict requirements as to the clearing away of weeds (including briars and gorse when not used for hedges) and the trimming of hedges, and when these requirements are not fulfilled, authorises an inspector

(*r*) See *infra*, sub. No. 51, pp. 233-240.

(*s*) Repealed by No. 5 of 1903, see *infra*, p. 257.

to do the work at the occupier's charges. The "noxious weeds" dealt with are for the most part English weeds the seeds of which have been imported mixed up with grass seed.

**Shorthand Reporters.**—No. 12 provides for the appointment of official reporters to be employed in the Supreme Court when the judge thinks fit, being paid by one or more parties as he orders, and to be employed in inferior Courts on the application of any party; such party paying the fees.

**Agricultural and Pastoral Societies Act Amendment (No. 13).**—This Act is passed to encourage the holding of winter shows of agricultural produce, and for this purpose empowers societies incorporated under the principal Act (1877) to acquire and manage land and to erect buildings thereon.

**Customs Duties Amendment (No. 14).**—This Act removes the customs duties previously levied on a number of articles. The chief articles so freed are agricultural machinery and implements, machinery for dairying, manufacture of beetroot sugar, and mining purposes, certain other tools and parts of machinery, locomotive and traction engines, rice, salt, raw coffee, kerosene. The duty is also lowered on a few articles, including tea (now taxed at twopence a pound), cocoa and roasted coffee (now taxed at threepence a pound), matches, drugs, and patent medicines.

**Education Boards Election (No. 16).** (i)—The Education Act, 1877, divides the Colony into twelve education districts, each of which is divided into school districts, the householders of any locality being empowered to form a separate school district. In each school district there is a school committee elected by the householders which have the immediate control of the primary school or schools of its district. In each education district there is an education board having a general control (under the Ministry of Education) of the primary education of its district, and also the power of establishing a high school. The education board was formerly elected by the school committees, each committee giving its vote corporately; the present Act provides for the election of education boards by the members of school committees voting individually.

**Government Valuation of Land (No. 17).**—This is an Act amending a previous Act of 1896. The two together provide for the valuation of all land in the Colony for the purpose of local rates by officials of the central Government, subject to appeal to special Courts, the members of which are nominated by the central Government. The Governor may use the same valuation for the purpose of assessment to land tax. The valuation is to distinguish between "capital value" and

(i) See *infra*, p. 243, and Consolidating Act, No. 20 of 1904, *infra*, p. 267.



“unimproved value.” (u) The present Act provides (*inter alia*) that if the Valuer-General (who is also the Commissioner of Taxes) is dissatisfied with the capital valuation of any freehold land as fixed by the Court, he may set his own value upon the land, and give the owner the choice of accepting such value as correct or being bought out at it. Similarly, an owner may require the Government either to reduce his valuation or to buy him at the valuation as it stands.

**Rating or Unimproved Value Act Amendment (No. 18).**—The principal Act of 1896 enabled any locality which adopted the Act by a poll to levy rates upon the “unimproved value of land” instead of on the “capital value.” If the proposal to adopt the Act was defeated at the poll, it could not be submitted again for three years. The principal Act required that at such a poll at least one-third of the ratepayers should record their votes. The Local Government Voting Reform Act, 1899, (x) does away with this and similar requirements in other Acts. The present Act provides that where a proposal to rate an unimproved value has been lost by reason that less than one-third of the ratepayers voted, it may be put to the vote again before the three years be elapsed.

**Testator's Family Maintenance (No. 20).** (y)—The object of this Act is to prevent a testator leaving his family without proper provision. While departing from the freedom of testamentary disposition which English and German law allows, it does not adopt the principle of Scottish, French, and Italian law—which prevents a man with a family from disposing by will of more than a certain portion of his estate—but takes a novel course by imposing a most difficult discretion on a judge. If a deceased person leaves a will “without making therein adequate provision for the proper maintenance and support” of the testator's wife, husband, or children, a judge may, upon their application, make such provisions as he thinks fit out of the estate; it is in his discretion to attach any condition he chooses to his order, and to refuse an order altogether on the ground of character or conduct. No assignment of the provision made before the order is to be effectual. Presumably children who take no benefit under a will are not entitled to apply if they are adequately provided for by the testator's settlement or if they have ample means of their own. Presumably also the standard of adequacy will vary with the family's condition of life. But the wording of the Act leaves both these questions open to some doubt.

**Post Office (No. 21).** (z)—This is an Act to consolidate the law regulating the postal service. One drastic provision may be noted. If the Postmaster-General has reasonable ground to suppose that a person

(u) *Vide infra*, Nos. 18 and 68.

(y) See *infra*, p. 259, and Consolidating Act, No. 59 of 1906, *infra*, p. 281.

(z) See *infra*, pp. 278, 286.

is carrying on a betting business or a lottery or the like, he may during his pleasure prevent any letters whatever being delivered to that person.

**Inspection of Machinery Act Amendment (No. 22).** (a)—By this Act the administration of the principal Act of 1882 is always to be in the hands of one of the Ministers composing the Executive Council. Certain existing enactments relating to machinery driven by steam and other specified kinds of motive powers are enlarged so as in each case to include a wider class of motive powers. Persons in charge of stationary engines and boilers are required to hold certificates of various grades, according to the character of the engine or boiler they tend.

**Indictable Offences Summary Jurisdiction Amendment (No. 23).**—In addition to various minute amendments of the principal Act of 1894, this Act contains two provisions to be noted. A person charged with any offence which is punishable on summary conviction with more than three months' imprisonment is in all cases to be given the option of trial by jury. When a Court proposes to commit an accused person for trial (for an offence not punishable with death), he may be given the option of pleading guilty then and there, and on doing so will be committed to the Supreme Court for sentence only.

**Public Health.**—No. 25 (b) consolidates the law as to public health without amendments which require notice.

**Criminal Code, 1893, Amendment (No. 26).**—By this Act incest between parent and child, brother and sister, whether of half or whole blood, and grandfather and granddaughter is made punishable, in each party being over the age of sixteen, with ten years' imprisonment with hard labour.

**Government Railways (No. 27).**—This Act consolidates and amends the law relating to the maintenance and management of Government railways.

**Old-Age Pensions Act Amendment (No. 28).**—The present Act (*inter alia*) relaxes the restrictions in the Act of 1898 (c) upon absence from the Colony, and diminishes the length of residence required in the case of a naturalised (non-Asiatic) subject. The governing bodies of charitable institutions are prohibited from refusing admission to persons as inmates on the sole ground that they have pensions.

**Fisheries Encouragement Act Amendment (No. 31).**—The Fisheries Encouragement Act, 1885, provided (*inter alia*) for the payment of a bounty or "bonus" to exporters of canned and cured fish. This provision was originally limited to seven years, and having been kept alive by two subsequent Acts till 1900, is by the present Act kept alive for one year more.

(a) See *infra*, p. 244.

(b) See *infra*, pp. 250, 264, 287.

(c) See *supra*, p. 220, and *infra*, p. 247.

**Sale of Poisons Amendment.**—No. 33 enlarges certain provisions of an Act of 1871 so that they extend to compounds of the poisons therein dealt with.

**Imprisonment for Debt Limitation (No. 36).**—This Act amends the Imprisonment for Debt Abolition Act, 1874, in several particulars. *Inter alia*, it transfers the form of committal from two justices to a stipendiary magistrate. It appears also to be intended to authorise imprisonment for debt in case of fraud not covered by the principal Act, but on a comparison of the two Acts it is doubtful whether it carries out this intention. Its most remarkable provision is one prohibiting committal to prison where the judgment creditor is a person, firm, or company whose business is the collection of debts, and has taken an assignment of the debt from the original creditor.

**Pacific Cable.**—No. 37 amends the Pacific Cable Authorisation Act, 1899, (*d*) by repealing a proviso limiting the total cost of the work authorised, and substituting a proviso that New Zealand's share of the guarantee to be given shall not exceed one-ninth of the whole.

**Slaughtering and Inspection (No. 38).**—This Act requires the provision of public abattoirs in the more populous districts, permits it in all districts, prohibits other slaughterhouses where there is a public abattoir, and requires registration of them where there is no public abattoir. It provides also for special meat-export slaughter-houses. All meat slaughtered in the public and meat-export slaughter-houses is to be inspected by an inspector appointed by the central Government, but this does not apply to the registered slaughterhouses. Meat is not to be exported for use beyond the Colony except upon the certificate of an inspector, who is to satisfy himself that the meat is free from disease.

**Workers' Compensation for Accidents (No. 43).** (*e*)—This Act is an adaptation of the Imperial Workmen's Compensation Act, 1897, (*f*) and, except in the points here mentioned, its provisions are substantially the same as those of its original. By s. 4 the Act is made to apply to, and only to, "employment by the employer on, in, or about (1) any industrial, commercial, or manufacturing work carried on by, or on behalf of, the employer as part of his trade or business; or (2) any mining, quarrying, engineering, building, or other hazardous work carried on by, or on behalf of, the employer, whether as part of his trade or business or not; or (3) any work carried on by, or on behalf of, the Crown or any local authority as the employer, if the work would, in the case of a private employer, be an employment to which this Act applies," and the effect of the definition of "workers" is to make the Act expressly apply to employment on any ship or vessel within the jurisdiction. Sub-s. 3 is

(*d*) See *supra*, p. 229.

(*e*) See *infra*, pp. 264, 272.

(*f*) 61 & 62 Vict. c. 37.



an example of a common but inconvenient form of drafting. It is to be noted that the words "on, in, or about" have not a local sense; and thus one of the harshest kinds of exclusion from the benefit of the English Act is removed.

All claims arising under the New Zealand Act are to be dealt with by the Court of Arbitration under the Industrial Arbitration Act, and the local Board of Conciliation under the same Act takes the place of the Registrar of Friendly Societies.

The liability under this Act is not confined to the person who would be liable under the English Act. On the one hand the person who actually employs the workman is always liable. On the other hand, when the immediate employer has contracted to do work which either "relates directly to the land, building, vessel, or other property of the principal, or is directly a part or a process in trade or business of the principal," the workman can always proceed against the "principal," and the immediate employer is then liable to indemnify the "principal." This being so, the "principal" should have, but apparently has not, against the employer the same security for his indemnity as the "worker" has for his compensation. The "worker's" security for his compensation includes a first charge on the mine, factory, building, machinery, plant, etc., etc., on or about which he was employed, and on the land where the mine, factory, or building is situate. Brothers and sisters may be "dependents."

In the rules in the schedule as to scale and conditions of compensation, the figures mentioned in the English Act are enlarged, and a limit is placed upon the total which the employer may have to pay in weekly payments.

**Representation** (No. 44). (*g*)—By this Act the members of the House of Representatives (other than Maoris) are increased from seventy to seventy-six. It was reduced in 1887 from ninety-one to seventy; there are four Maori representatives. There are standing Commissions (one for each island) to redistribute seats, each within its own island, after every census. These are to meet together once, under this Act, to decide how many of the new seats are to go to each island, and are then to resume their separate operations. The rules to be followed by the Commissions in allotting these six seats between the islands and thereafter in redistributing seats within each of the two islands are laid down by Acts of 1887 and 1889. The principle of the rules is that proportionately more representation is given to the population outside towns of over two thousand inhabitants than to the population in such towns; and the provisions for securing this are ingeniously so drawn as to tell most of all in favour of the scattered European

inhabitants of Maori districts. Subject to this, each island is divided into single-member districts of approximately equal population (with a few three-member town constituencies). The present Act enlarges the limit by which the population of a constituency may exceed or fall short of the number, fixed by the principles above referred to, from 750 to 1250.

**Animals Protection Acts Amendment (No. 45).**—This Act for the southernmost province, Otago, the date of commencement and closing of the (nine months') close season for game. It forbids the export of game, except by special permit, and it makes every third year a close season for the native pigeon, the pukeko, and the kaka.

**Electoral Act Amendment (No. 46).** (*h*)—This Act, in addition to various minor provisions in regard to registration, etc., makes it an "illegal practice" for any person "to canvass for votes for or on behalf of a candidate" for Parliament, the effect of which is to unseat the candidate if elected and to subject the canvasser to penalties. It appears (though not quite clearly) that the candidate's consent to a knowledge of the canvassing is immaterial. The Act further makes every day of an election a public holiday after mid-day, and makes it unlawful to sell liquor from mid-day to 7 p.m.

**Maori Councils (No. 48).** (*i*)—In any district proclaimed by the Governor for the purpose, there is, under this Act, to be a council consisting of the stipendiary magistrate or other official member nominated by the Governor and six to twelve Maoris, being those who have received the largest number of nominations from Maoris in the district ("Maoris" include half-castes). It is to be the duty of such council to make recommendations to the Governor as to the ascertainment and enforcement of rights and duties among Maoris prescribed by Maori custom, the suppression of injurious customs, and measures for the education, health, and general advancement of the Maoris, and to keep the Government informed on matters affecting Maori welfare—*e.g.* by supplying statistics of causes of death. Such a council may further make bylaws for sanitary purposes, the prevention of drunkenness and gambling, and of smoking by children, the management of eel-weirs and oyster-beds, the branding of cattle, the regulation of hawkers, and other matters. Conferences of delegates from such councils may be held annually.

**Land and Income Assessment (No. 49).** (*k*)—This is an Act consolidating and amending the Acts of 1891 and later years which have replaced the former (ungraded) property tax. The main features of the new system are as follows:—

(*h*) Included in No. 24 of 1904, *infra*, p. 267.

(*i*) See *infra*, p. 240.

(*k*) See *infra*, pp. 260, 234.

Land (other than native land) is taxed on its capital value, less the value of unexhausted improvements and charges. Charges on land are taxed on their capital value. The tax in the former, but not in the latter, case is steeply graduated.

Income derived from land (including improvements) or from charges on land is, generally speaking, exempt from income tax. How this exemption affects the profits of speculative building is a complex question; and it does not appear to apply to owners of mines, quarries, timber, and flax.

Income tax is designed to reach all classes of income not exempted as above. Income from shares and debentures of companies is reached through taxation of the companies (whether under land or income tax), and the effect of the provision for this purpose is to deprive small share- and debenture-holders of the exemption given to others with small incomes. Income tax is not graduated.

**Municipal Corporations** (No. 50). (*l*)—This Act consolidates, with some amendments, the Municipal Corporations Act, 1886, several Acts amending that Act, and, so far as they relate to boroughs, a number of Acts dealing with local finance, with public works, and with public libraries.

**Industrial Conciliation and Arbitration** (No. 51). (*m*)—This Act consolidates with amendments the celebrated Act for this purpose passed in 1894 and three intervening amending Acts. The amendments in this and the three previous Acts concern only matters of detail. The following is an outline of the law as it now stands:—

The Act provides in the first place for the registration of “industrial unions,” whether of employers or of workers. These are incorporated for all purposes of the Act, and have, *inter alia*, the power of suing their own members for fees, fines, etc. The Registrar has power, subject to appeal to the Court of Arbitration mentioned below, to refuse registration in case of needless multiplication of unions.

There is further provision for the registration of federations of such unions under the name of “industrial associations,” and with slight exceptions everything here said as to “industrial unions” applies also to these associations.

The purpose of the Act is to provide for the settlement of “industrial disputes,” which are so defined as to embrace almost every conceivable matter upon which employers and workers can fall out. The parties to such settlements may be either unions of employers on the one hand and of workers on the other, or individual employers

(*l*) See *infra*, p. 281.

(*m*) See amendments, *infra*, pp. 244, 261, 268, and finally a “Compilation” Act, No. 32 of 1905, *infra*, p. 271.



and unions of workers. The modes of settlement provided are, first, "industrial agreements"; secondly, reference by either party to a local Board of Conciliation in the first instance, and, by way of appeal, to the Court of Arbitration. When such reference to a board has been made, all parties concerned are bound under penalties to preserve the *status quo* till the final decision of the question.

An "industrial agreement" is a settlement framed by the parties for themselves, publicly filed, and enforceable by law. It must specify a period not exceeding three years, at the expiration of which it is subject to be set aside by a new agreement of the same kind or by an order of the Court of Arbitration. Until so set aside it continues in force.

The Colony is to be divided by the Governor into "industrial districts," in each of which there is to be a Board of Conciliation, consisting of equal numbers elected by the unions of employers and the unions of workers in the district respectively, and of a president co-opted by the members so elected, or, in default of this, appointed by the Governor. Each union, large or small, has the same number of votes; these may be given cumulatively. Provision is made for the constitution, upon the application of all parties concerned, of special boards of experts to deal with special emergencies.

When a dispute is referred to a board, the board has the power to summon witnesses and examine them on oath, without being bound by the legal rules of evidence; it cannot, however, call for books, etc. New parties to the dispute can be joined at any time during the proceedings. After hearing the dispute, the board frames recommendations, which are publicly filed. These recommendations may be forthwith accepted by the parties, either as they stand or with such variations as may be mutually agreed to, and thereupon the recommendations take effect as an "industrial agreement." Failing such acceptance, the recommendations still take effect after the expiration of one month from their being filed, unless, in the meantime, either party applies to the Court of Arbitration.

This Court, a single Court for the whole Colony, consists of three persons appointed by the Governor, one from among persons nominated by unions of workers (every union having a right to make one such nomination), one from among persons similarly nominated by unions of employers, and one (the president) from among the judges of the Supreme Court. The Court sits publicly; it has, in addition to the power of a board, the power to call for books, etc. Its award is final. It must specify a period, not exceeding three years, after which it is subject to be set aside by a fresh award of the Court, but unless so set aside it continues permanently in force.

In the event of any breach of such an award, or of a settlement by a Board of Conciliation, or of an "industrial agreement," any party concerned, or the Registrar of Industrial Unions, may apply to the Court of Arbitration for the enforcement of the broken provision. The Court may then impose such penalty as it deems just. If the property of a union on which a penalty has been imposed is insufficient to meet the penalty, then the individual members of the union are liable, up to £10 each, in respect of the penalty. With this exception, awards, etc., are not directly enforceable against a member of a union, but only against the union corporately. It has been explained already, however, that an individual employer may be a party to a dispute, an award, etc. Moreover, when an award (not a settlement by the Board or an "industrial agreement") is binding on any employer, a non-union worker employed by him in the same industry is bound by the award and subject to a penalty, not exceeding £10, for breach of it.

Workers who are not members of a union cannot, as has been seen, refer any dispute to a Board or the Court, but it must be noted that a union of workers can thus refer questions concerning the relation of any employer in its own industry, although none of its members are in his employment. It must further be noted that an award of the Court (though not a settlement of a Board) is binding, not only upon the parties primarily concerned, but upon all persons who, while the award is in force, are engaged in the same industry within the same district.

It remains to notice the provisions as to the application of the Act to employment on Government railways; these seem to have this singular result, that workers on Government railways may apply to the Court of Arbitration, but their employer may not.

**Land for Settlements Consolidation (No. 52).**(*n*)—This Act consolidates and amends the Land for Settlements Act, 1894, and four amending Acts. It authorises and regulates the acquisition of land by the Government, by compulsory purchase if necessary, for the purpose of planting settlers upon it. The call for such a power on the part of Government appears to lie in the existence of Crown lands which can be made suitable for settlement by, and only by, the addition of some neighbouring land; but the Act is also intended to provide for the acquisition of sites for workmen's dwellings in towns.

**Maori Lands Administration (No. 55).**(*o*)—This Act establishes Maori Land Councils in districts to be determined by the Governor. Each council will be partly appointed and partly elected by the Maoris.

(*n*) See *infra*, p. 272.

(*o*) See *infra*, p. 245.

A majority of each will be Maoris. The councils will settle questions of title to native lands. Moreover, every alienation of land by a Maori will require for its validity the approval of the council; and the council is to determine how much of the land now belonging to every Maori is requisite for his or her support, and such land is to be absolutely inalienable. Further provision is made for preventing fraudulent purchases of land from Maoris.

**Private Industrial Schools Regulation and Industrial Schools Act Amendment (No. 56).**—The object of this Act is to bring private industrial schools under effective inspection and to give the Governor powers of making regulations for them.

**New Zealand Institute of Surveyors and Board of Examiners.**—No. 58 creates an institute of duly qualified surveyors who are to have the exclusive right of acting in that capacity in relation to Crown land and under the Acts affecting titles to land.

**Mining Act Amendment (No. 64) (p).**—This Act, along with various amendments of the law as to mining claims, contains a provision empowering industrial unions (q) of workers employed in mines to appoint at their own cost two inspectors from among their members, who are to have the right of inspecting the mines concerned.

**Defence Act Amendment (No. 69).**—The most interesting provision in this Act is one providing for the creation of an "Imperial Reserve," which may be employed outside New Zealand on occasions sanctioned by Parliament, but at the cost of the Imperial Government.

**Deceased Husband's Brother Marriage.**—No. 72 (r) legalises marriage of a woman with her deceased husband's brother. It is retrospective, except where a lawful marriage with another man has intervened, and except in regard to property inherited under the previous law.

**New Zealand Ensign (No. 73).**—This Act is reserved by the Legislature (s). It institutes a Colonial ensign—viz. the blue ensign with the Southern Cross represented on the fly thereof by four (sic) five-pointed red stars with white borders.

**1901 (t)** Acts passed—Public, 74; Local and Personal, 26;  
Private, 3.

**General Observations.**—Of the public Acts of which no account is given below, some are of a local character, some are for the extension of periods fixed by previous Acts, or for the validation of proceedings

(p) See *infra*, p. 250, and Compilation Act, No. 39 of 1905, *infra*, p. 271.

(q) See No. 51, *supra*, pp. 238, 240.

(r) Consolidated in No. 19 of 1904, *infra*, p. 266.

(s) See *infra*, p. 250.

(t) Contributed by Godfrey R. Benson, Esq.



in which some technical flaw has been found, and some are amending Acts of no interest. One of the private Acts, No. 1 (*Rhodes Trust*), is of interest as pointing to the absence in New Zealand of any law adequately taking the place of the Settled Land Acts.

**Chinese Immigration (No. 3) (u).**—Acts of 1881 and 1888 limit the number of Chinese passengers that may be brought to New Zealand by any vessel, the limit varying with the tonnage of the vessel. They also require a payment in respect of each such passenger landed. The present Act aims at preventing these provisions from being evaded by Chinese members of the crew landing and remaining ashore.

**Accidents' Compensation.**—No. 4 empowers the Court in any proceeding to recover compensation for injuries through accident (other than proceedings under the Workmen's Compensation Act in which analogous provisions already existed) to require the claimant to be examined by an independent doctor appointed by the Court.

**Police Offences.**—No. 8 enlarges the class of public places in which the use of provocative language is penalised by the (N.Z.) Police Offences Act, 1884; it gives the magistrate power to fine up to £20, instead of only to imprison up to one year, for profane or obscene language used in a public place; and it makes habitual consorting with disorderly persons of various descriptions an offence punishable with three months' imprisonment.

**Nurses' Registration (No. 12).**—This Act provides for the formation of a register of qualified sick-nurses. Three years' hospital training and the passing of an examination are required for registration in most cases; but the Minister may make special provision for special cases.

**Exportation of Arms.**—No. 15 authorises the Governor to prohibit by proclamation the exportation, to any State named in the proclamation, of arms or warlike stores.

**Physical Education: Drill.**—No. 17 (x) requires provision to be made for physical drill in all schools. The details are to be arranged between the Minister and the boards.

**Charitable Gifts (No. 19).**—By an Act of 1883, property given by will to certain specified kinds of public institutions, including schools and hospitals, is by an earlier Act exempted from death duties. The present Act makes the exemption from duty extend to all gifts, whether by will or otherwise, upon any trust for the public of whatever nature.

**Mortgages of Land.**—No. 20 (y) provides a simple statutory form for mortgages of land. The Act appears to import into a mortgage

(u) The Acts regulating the immigration of Chinese into the Dominion are contained in Parliamentary Paper, 1904, Cd. 2105.

(x) Included in the Consolidating Act, No. 20 of 1904, *infra*, p. 267.

(y) See *infra*, p. 266, and Consolidating Act, No. 36 of 1905, *infra*, p. 271.

made in this form all the provisions necessary for making the form widely useful. It is at any rate a great improvement upon the corresponding provision of the English Conveyancing Acts.

**Maori Antiquities.**—No 21 (z) empowers the Governor to buy any Maori antiquities. It further requires that Maori antiquities shall not be exported without previously being offered to the Governor.

**Rabbits** (No. 23).—Landowners who fail to destroy rabbits on their land when duly required to do so are liable under this Act to a penalty.

**Shops and Shop Assistants** (No. 24). (a)—An Act of 1894 required a weekly half-holiday to be given to shop assistants, with certain exceptions. An Act of 1895 brought chemists' assistants within the exception. The present Act (with certain safeguards) restores them their half-holiday.

**Charitable Institutions' Rating** (No. 25).—Local authorities may under this Act exempt charitable institutions from rates.

**Opium** (No. 26). (b)—Opium for smoking is not to be imported or manufactured. The importation of opium in a form unsuited for smoking is made subject to permits and regulations, and permits for this purpose may not be given to Chinese. The smoking of opium is prohibited under penalty.

**Money-lenders** (No. 28).—The framers of this Act have taken the (United Kingdom) Money-lenders Act, 1900, (c) and, by the substitution of the word "or" for the word "and," have changed it from an almost inoperative measure into a very drastic measure. It will be remembered that under the United Kingdom Act the Court may upset a contract with a money-lender when it appears that the interest (or other charges) is excessive *and* that the transaction is one against which equity would (apart from the Act) give relief. (d)

The effect of the change of "and" to "or" is obvious. It does not appear that such a simple and sweeping provision was at any stage contemplated by the authors of the United Kingdom Act.

**Education Boards' Election.**—No. 29 (e) amends in various details the Act of 1900, (f) which provided that education boards should be elected by the individual members of the several school committees within their area, instead of by the committees corporately. In particular this Act requires a declaration of secrecy by the returning officers, etc., and provides a penalty for disclosing the state of the poll before completion,

(z) See *infra*, p. 266.

(a) Incorporated in No. 52 of 1904, *infra*, p. 263.

(b) See *infra*, p. 251.

(c) 63 & 64 Vict. c. 51.

(d) See *Wilton & Co. v. Osborn*, [1901] 2 K. B. 110. Overruled in *In re Debtor*, [1903] 1 K. B. 705, and in *Samuel v. Newbold*, [1906] A. C. 461.

(e) Included in the Consolidating Act, No. 20 of 1904, *infra*, p. 267.

(f) See *supra*, p. 232.

or disclosing how any voter has voted. It is suprising that in an election of this character secrecy should be found requisite.

**Fisheries.**—No. 30 extends for a further year the bonus, given for a period by an Act of 1885, on canned and cured fish for export.

**Inspection of Machinery.**—No. 32 amends the Act of 1900, (*g*) *inter alia*, by extending the times for the examination and certification of persons in charge of machinery, and by extending the requirements of certification to persons in charge of gold dredges.

**Evidence** (No. 34). (*h*)—An Act of 1895 provides that in certain proceedings the judge or magistrate may require any person to be examined. The present Act extends the list of these proceedings, all of which (as extended) relate either to revenue or to the liquor laws.

**Trustees** (No. 35).—This Act, amending Acts of 1883 and 1891, adopts the provisions of the (England and Ireland) Trustee Act, 1893 (*i*) (ss. 10 to 12 and 22), in regard to appointment of new trustees, and the exercise by a surviving trustee or trustees of powers originally conferred on two or more trustees. It also adopts the provisions of the (England and Ireland) Conveyancing Act, 1881, (*k*) in regard to maintenance of infants out of the income of trust property.

**Industrial Conciliation and Arbitration.**—No. 37 amends the law of conciliation and arbitration (which was codified in the preceding year) (*l*) in a number of details. The most noteworthy of these amendments enables either party to a dispute to take it to the Court of Arbitration without awaiting the decision of the Board of Conciliation.

**Public School Teachers' Salaries** (No. 38). (*m*)—This Act lays down an elaborate scale regulating the number of teachers and pupil-teachers in public schools and the pay of each. The number of teachers and the pay of the senior teachers rises with the average attendance of children in each school. The proportion of teachers (including pupil-teachers) to children is about one to forty. The salaries range from a capitation fee of £5 per child, for the sole teacher in a school with less than nine children, to £374 a year—the salary of a head-master in a school of 1020 children. A head or sole teacher has also, when the number in average attendance exceeds twenty, a house, or an allowance in lieu thereof of from £20 to £50. The junior assistant in all the schools where assistants are allowed gets £80, and the senior male assistant in the largest schools £245. The salaries of women teachers are equal to those of men in the lower grades, but not in the higher. Considerable power to depart from the scale is conferred upon the Minister and

(*g*) See *supra*, p. 234.

(*h*) Incorporated in No. 16 of 1905, *infra*, p. 269.

(*i*) 56 & 57 Vict. c. 53.

(*k*) 44 & 45 Vict. c. 41.

(*l*) See *supra*, p. 238, and Compilation Act, No. 32 of 1905, *infra*, p. 271.

(*m*) Included in No. 20 of 1904, *infra*, p. 267.



the boards acting together, especially for the purpose of district high schools.

**Local Bodies' Loans** (No. 39). (*n*)—Local bodies may by this Act borrow for the purpose of public works, on the security of a special rate to be levied on the area benefited, provided that their borrowing is authorised by a majority of three-fifths at a poll of the ratepayers concerned. It further requires the Colonial Treasurer, within the limit of the funds available, to lend the sums duly demanded by local bodies for this purpose, and accordingly increases by £250,000 a year the amount which under previously existing Acts might have been lent to local bodies for various purposes, and authorises the Government to borrow for the purpose of making such loans.

**Local Bodies' Gold-Fields, Public Works and Loans.**—No. 40 makes mining privileges which were not previously ratable liable to a special rate for public improvements in gold districts.

**Maori Lands** (No. 42).—The Maori Lands Administration Act, 1900, (*o*) required the consent of the Maori Council to every loan of land by a Maori, and the consent of the Governor in Council to every sale; the present Act restricts these requirements to the case of land owned by more than two owners. This, however, does not affect the provisions of the principal Act intended to secure that every Maori alienating land shall retain sufficient for his own support. This Act further exempts from the provisions of the principal Act, lands which have been bought by a Maori from a European. It also extends the definitions of Maori so as to include all persons of Maori descent, persons of one quarter or less Maori blood having been excluded by the previous definition.

**Pariroa Native Reserve.**—No. 43 vests certain lands, formerly set apart for a certain tribe, in the Public Trustee in trust for beneficiaries to be ascertained by the Native Land Court, and directs that a part of these lands shall be set apart for a native school.

**Cook and Other Islands' Government** (No. 44). (*p*)—The islands subject to this Act were in 1901 ordered by the Imperial Government, with the consent of the General Assembly of New Zealand, under the (Imperial) Colonial Boundaries Act, 1895, (*q*) to be part of New Zealand. This Act, which, unless extended, is to remain in force for one session only, provides that the laws now in force in the islands shall continue to prevail, including native customs so far as they are not "repugnant to the general principles of humanity." But the Governor may by Order in Council repeal or alter any law, and may direct that any New Zealand laws, except those relating to intoxicating liquors, shall apply.

(*n*) See *infra*, p. 254.

(*p*) See *infra*, pp. 254, 267.

(*o*) See *supra*, p. 240.

(*q*) 53 & 59 Vict. c. 34.

The existing Courts are to continue, but subject to appeal to the New Zealand High Court, and such appeals may be heard by a single New Zealand judge at the islands. The Governor may appoint a Resident Commissioner and other officers, and give them any powers. The existing "Federal Parliament" and "Native Councils" may continue to sit, under altered names, and may pass Ordinances, which, however, after consent from the Governor, must lie before both Houses of the New Zealand General Assembly. The New Zealand Tariff is to apply, with the addition of an *ad valorem* duty not exceeding 10 per cent. on articles which under that tariff are duty-free. The Governor may exclude certain classes of imports. He may take land for military or naval reserves for the Imperial or Colonial services.

**Government Railways Department Classification (No. 45).**—This Act prescribes the rates of pay for all grades in the Government railway service. The rates prescribed by it may be raised or lowered by a vote of the House of Representatives upon a message from the Governor, but any such increase or decrease must be made ratably throughout all grades of the service. The rates prescribed are, when judged by English standards, high for the lower ranks, but by no means high for the few highest positions. The general manager gets £1000, rising to £1250 a year. The two chief engineers and chief traffic manager each get £700, rising to £900 a year. The rest of the "first division," which appears to include headquarters staff and station-masters, get in the lowest grade (after a cadetship of six years) £110, rising to £180 a year, and in the highest £600, rising to £650 a year. Some examples of the pay in the "second division" may be given. Guards get from 8s. to 10s. a day, the great majority of signalmen from 8s. to 9s. a day; fitters and boilermakers get from 8s. to 12s. a day; engineers 10s. to 12s. a day; firemen 7s. 6d. to 9s. a day; forgemmen may rise to 15s. a day, and unskilled labourers appear as a rule to get 7s. a day.

The Act also sets up in each island an "Appeal Board" to hear appeals from any member of the service who is "aggrieved with any decision of his superior officer," including appeals against dismissal or reduction in grade. The Board consists of a judge or magistrate, a member elected by the "first division," and several members elected by the several branches of the "second division;" the representatives of the "second division," however, only sit in cases affecting their own branch of that division. Decisions of the Board must go to the Minister of Railways for his approval, and appeals against petty fines go to the Minister only.

**Coal Mines (No. 46). (r)**—This Act reduces the royalties required in the case of any coal-mining lease granted by Government. It amends

(r) Nos. 46 and 47 were consolidated in No. 15 of 1905, *infra*, p. 269.

the provision of the principal Act of 1891 for the inspection of coal mines by representatives of the miners, by enacting that inspectors for this purpose may be appointed by the union to which the miners belong, and in that case need not be themselves employed in the mine, and shall at all reasonable times have access to the mine. The difference of this from the corresponding provision of No. 60, below, suggests that miners' unions are more common in connection with coal mining. Among the other provisions of the Act are provisions corresponding to the "eight-hours section" of No. 60. (s)

**State Coal Mines** (No. 47).—The Government is authorised by this Act to work coal mines on unalienated Crown lands, and on Crown lands resumed with the consent of Parliament. Sums not exceeding in the whole £150,000 may be raised to meet initial expenses, by borrowing, or out of the balances of certain public accounts, including the Government Insurance account and the Public Trustee's account.

**Payment of Members.**—No. 48 (t) raises the payment of members of the Legislative Council from £150 to £200 a year, and that of members of the Houses of Representatives from £240 to £300 a year. It also makes the period for which a member may be absent without incurring a fine of £2 a day, five clear days only instead of fourteen.

**Old Age Pensions** (No. 50). (u)—The present Act is intended to facilitate inquiries, by the "deputy registrar" of old age pensions, into the circumstances of applicants for pensions, making it the duty of every one to give such information as may be sought from him for this purpose, imposing penalties for refusing information or giving false information. It also provides for the reduction or cancelling of a pension when, after it has been granted, the pensioner becomes possessed of property; and it deals with the case when the applicant for a pension has recently transferred property to friends.

**Military Pensions.**—No. 53 (x) extends the provisions of the Military Pensions Act, 1900, to the contingents for service in South Africa, which were raised after the passing of the earlier Act—viz. the 6th and 7th contingents.

**School Attendance** (No. 54). (y)—Children between the ages of seven and fourteen are required to attend a public school four, six or eight mornings or afternoons a week, according to whether the school is open six, eight or ten times in the week. Total or partial exemption from this rule may be obtained from a head teacher or a member of a school committee on the grounds of efficient education elsewhere, distance, etc.; and schools, other than public schools, may obtain general exemptions

(s) See *infra*, p. 249.

(t) Included in No. 24 of 1904, *infra*, p. 267.

(u) See *supra*, p. 234, and *infra*, p. 269.

(x) See *infra*, p. 256.

(y) Included in No. 20 of 1904, *infra*, p. 267.



for the children attending them. Parents are liable to a penalty of from 2s. to 10s. for every week of irregular attendance on the part of a child.

The Act further authorises school boards to establish special truant schools, to which a child may be sent at the wish of a parent, or upon the order of a magistrate. A child who, after admission to a truant school, fails to attend regularly, may be committed to an industrial school, and the magistrate may order the parent to maintain the child there. These provisions, being plainly inapplicable to thinly populated districts, suggest that among the agricultural population they are not needed.

The Act further throws upon the parents of blind and deaf children the duty of providing them with education suitable to their case between seven and sixteen. When parents are unable to do this the duty devolves upon the Minister of Education, and when the Minister cannot agree with the parents as to their condition to the cost, such contribution may be ordered by a magistrate.

**Criminal Code: Defamation.**—No. 56 codifies the criminal law in regard to defamatory libel.

**Companies.**—No. 58 (z) substantially adopts for New Zealand the United Kingdom Companies Act, 1900 (a) (except those provisions of it which were contained in a New Zealand Act of the same year). It contains, however, besides the necessary modifications, several additional provisions, among which the following may be noticed. Every company must require its directors to hold a qualification in shares. Every subscriber of a memorandum of association is required to take a director's qualification. It is made unlawful to transfer or allow the transfer of a share on which there are calls unpaid—a novel and startling departure. In the case of a mining company a half-yearly statement of accounts must be sent to each shareholder, and this statement must show the amount (if any) in arrear on the part of each shareholder. In all cases of winding-up by the Court the official assignee in bankruptcy must be the liquidator, though the Court may on his application appoint a deputy to act for him. The provision, omitted in the (N.Z.) Act of 1900, (b) but here introduced, for the rectification of omissions to register mortgages, etc., is less liberal than s. 15 of the (United Kingdom) Act of 1900, and injustice may easily arise from this.

**Factories** (No. 59). (c)—This is a consolidating and amending Act. The scope of the Act is, in regard to the places and employments to which "factory" regulation applies, far wider than that of the United

(z) See *infra*, p. 256, and Consolidation Act, No. 53 of 1903, *infra*, p. 261.

(a) 63 & 64 Vict. c. 48, see *supra*, vol. i. pp. 56-62.

(c) See *infra*, pp. 256-257, 274, 281, 283.

Kingdom Acts, for the definition of "factory" includes, *inter alia*, "every building, office, or place in which two or more persons are employed, directly or indirectly, in any handicraft, or in preparing or manufacturing goods for trade or sale," except buildings in course of erection, and temporary sheds for building purposes. Questions may arise as to the meaning of "place" in this definition. Provision is made lest the intention of this wide definition should be evaded by the "sweating" system; for every occupier of a clothing factory or the like is required to keep a register of work given out; and clothing, etc., so made, if not made in a registered factory, is required to be marked in an effective manner.

The provisions in regard to safety and sanitation give very wide and general power to inspectors, but contain nothing corresponding to the careful elaboration of requirements in detail which characterises the factory law of the United Kingdom.

The hours of adult male labour are limited to: forty-eight a week; eight and three-quarters a day; five continuous hours without a three-quarters of an hour interval. This, however, does not apply to men employed in getting up steam or the like, nor to certain scheduled trades concerned with the treatment of materials which decay rapidly. These include the meat-freezing and dairying trades.

Boys and girls under sixteen are only to be employed in factories in special cases specially authorised by the inspector. For employment under sixteen in factories, a certificate from the inspector of the general fitness of the boy or girl is required, in addition to educational requirements. Employment under eighteen is altogether forbidden in certain trades specially dangerous to health.

The Act requires payment of a minimum wage "being in no case less than five shillings per week for boys and girls under sixteen years of age, and thereafter an annual increase of not less than three shillings weekly till twenty years of age.

"If any person employed in any capacity in a factory does any work for the factory elsewhere than in the factory, the occupier," of the factory "commits an offence."

**Mining** (No. 60). (d)—The principal provisions of this Act are as follows:—

No miner is to be employed underground for a longer period in any day than eight hours exclusive of meal times, except with payment of overtime wages at the rate of one-fourth as much again as the ordinary rate. (e) It provides for the examination and certification of persons to be put in charge of dredgers in deep streams.

(d) See *infra*, p. 253, and Compilation Act, No. 39 of 1905, *infra*, p. 271.

(e) Compare No. 46, see *supra*, pp. 246-247.

It amends the provisions in an Act of 1900 (*f*) for the inspection of mines by representatives of the miners, by enacting that such inspectors need not be persons employed in the mine, though if they are not so employed the *bonâ fides* of every application on their part to inspect must be certified by a magistrate or justice of the peace.

**Public Health** (No. 2).—No. 61 empowers the Governor to prohibit or impose condition upon the importation of any material likely in his opinion to convey infectious diseases. The Act amends the provisions of the consolidating Public Health Act of 1900 (*g*) as to quarantine, and amends in unimportant respects the provisions for exemption from vaccination of the children of persons conscientiously believing that vaccination will be prejudicial to the child's health.

**Timber.**—No. 63 provides that the Governor may cause duties not exceeding 3s. per hundred superficial feet to be imposed on exported timber.

**Native Land** (No. 65).—The greater part of this Act is concerned with the settlement of thirty-four cases of special difficulty which it appears to have been beyond the powers of the Native Land Court to settle satisfactorily. But it contains also amendments to the law of which the most interesting empowers the Court in ascertaining successors to a native to give (contrary, it appears, to native custom) a life interest in his property to his widow, whether married according to English law or according to native custom.

**Flax Grading and Export.**—No. 67 (*h*) prohibits the export of flax which has not been examined and graded according to regulations which are to be made by the Governor.

**Royal Visit's Expenses.**—No. 73 provides for repayment to the Governor of £2250—the expenses incurred by him on behalf of the Colony and at the request of his Ministers on the occasion of the recent Royal visit.

**New Zealand Ensign** (No. 74).—An Act dealing with the same subject was passed in 1900, (*i*) but by a provision in the Act itself, reserved for the ascertainment of her late Majesty's pleasure, it appears that the authorisation by that Act of the perfectly general use of the ensign in question as the New Zealand ensign, was not approved by the Imperial Government; for the present Act authorises such general use on shore only, and at sea restricts the use to vessels belonging to the Government of New Zealand, or permitted under an admiralty warrant to fly the ensign. It appears from the preamble that this ensign was sanctioned for vessels in the employment of the Colony, by a proclamation of the

(*f*) See *supra*, p. 241.

(*h*) Repealed by No. 35 of 1903, *infra*, p. 260.

(*g*) See *supra*, p. 234.

(*i*) See *supra*, p. 241.



Governor in 1869, under the (Imperial) Colonial Naval Defence Act, 1865, (*k*) and had since passed into more general use which it was thought well to sanction.

**1902** (*l*) Public Acts, 62 ; Local and Personal Acts, 30 ; Private Act, 1.

**Fisheries Encouragement** (No. 9).—This is a now annual Act continuing the bounty upon canned and cured fish for export, which was originally granted in 1885 for seven years.

**Statutes Compilation** (No. 10) (*m*).—Upon resolutions for the purpose being passed by both Houses, the Solicitor-General is to prepare a compilation of any amended Act with the Acts amending it. Such compilation may then be submitted to Parliament for enactment without its being competent to amend it.

**Unclaimed Moneys Act Amendment** (No. 11).—This Act remedies a defect (or supposed defect) in the drafting of an Act of 1898 (*n*) which provides for the payment to Government of dividends and other sums due from companies to persons whom after a lapse of years it is impossible to find.

**Stamp Act Amendment** (No. 12).—This Act, *inter alia*, requires the execution both by buyer and seller of stamped contract notes upon every sale of shares in a mining company, and no transfer may take place unless such duly stamped notes have been given (the stamp duty is 1s. to 2s. 6d.). It also imposes stamp duty of 1s. on every written guarantee to answer for the debt or default of another.

**Motor-Cars Regulation** (No. 14) (*o*).—In the autumn of 1898 one William McLean, who had arranged for the introduction of motor-cars into New Zealand, obtained a private Act authorising and regulating their use, which would otherwise have been of doubtful legality. The present Act, which repeals the Act of 1898, empowers local authorities with the consent of the Colonial Secretary to make bylaws restricting the use of motors on particular roads and bridges and regulating the keeping and use of petroleum, etc. It requires the use of a bell or the like, and, at night, of a light, and forbids motor-drivers to travel "at a greater rate of speed than is reasonable." It also requires that motor-cars, like other machinery, shall be annually inspected. There is no fixed speed-limit. There is no provision for registration of cars, for the carrying of marks of identification, or (in the case of private cars) for the licensing of drivers.

**Opium Prohibition** (No. 15).—This Act amends the Act of 1901 (*p*)

(*k*) 28 & 29 Vict. c. 14.

(*l*) Contributed by Godfrey R. Benson, Esq.

(*m*) See *infra*, p. 263.

(*n*) See *supra*, p. 219.

(*o*) Repealed by No. 32 of 1906, *infra*, p. 278.

(*p*) See *supra*, p. 243.

by making the possession of prohibited opium, as well as its actual importation, an offence, providing for the confiscation of opium unlawfully possessed, and increasing the penalty for importing opium for smoking from £100 to £500.

**New Zealand University Act Amendment** (No. 16).—This Act amends the constitution of the Senate and Convocation of the University of New Zealand with a view to connecting the University more closely with the affiliated institutions.

**Land Transfer Amendment** (No. 17).—This Act does away with the statutory form of mortgage provided by the Land Transfer Act, 1885, for lands registered under it, and substitutes for mortgages of such lands a form substantially the same as that provided by the Mortgages of Land Act, 1901. (*q*)

**Land and Deeds Registration Districts** (No. 18).—The boundaries of districts for the purpose of the Deeds Registration Act, 1888, and the Land Transfer Act, 1885, having been from time to time altered, and it being impracticable to effect a corresponding removal of the original registers from one district to another, this Act meets the consequent difficulty by providing that a copy of any original register may, with the consent of the registrar, have the effect of the original.

**Fisheries Conservation Act Amendment** (No. 19).—This Act gives the Government powers to undertake fish breeding. It prohibits the sale or letting of fishing rights by any person. It secures to every occupier of land the right of free fishing on his land. It extends the drastic powers of the Governor in Council for the protection of fish to all waters not wholly enclosed by the land of a private owner.

**Old Age Pensions Amendment** (No. 20).—The most interesting provision of this Act permits a person who would otherwise be entitled to a pension, and who resides on a small property of his own, to transfer the same to the Public Trustee. The value of the land will then not be reckoned against him in computing the amount of pension to which he is entitled; and he may live on the land rent free, but paying for repairs and all assessments. At his death the land will be sold and the proceeds will be applied first to reimburse the State for the addition to the owner's pension resulting from this provision, the balance going to the owner's representatives.

**Electoral** (No. 21) (*r*).—This Act consolidates the law relating to the constitution and election of the House of Representatives. In New Zealand, as is well known, women (including Maori women) have the suffrage, but have not the right to be elected to Parliament; the principle called "one man one vote" is followed; and provision is made for the more rapid registration of voters than in this country,

(*q*) See *supra*, p. 236.

(*r*) See *infra*, p. 270.

for the easy transference of voters from the register of one district to that of another, and (under another Act) for the payment of members. Moreover, the House contains four representatives elected in a special manner, which involves open voting, by the Maoris (including persons of mixed race who are more than half Maori). Few other divergences between English and New Zealand law need be mentioned, but a redistribution of seats is effected by standing commissions after each census; person who are (except as members of companies) Government contractors are ineligible to the House, but if previously elected are not extruded; and, by an enviable provision, a candidate's expenses must never exceed £200.

**Mining Act Amendment (No. 22)(s).**—Among the provisions of this Act we may notice the extension of the Act of 1899 (*t*) to timber-cutting and saw-mills.

**Secondhand Dealers (No. 23).**—This Act prohibits the sale at shops or stores, etc., of secondhand articles except by persons licensed for the year as secondhand dealers by the local authority upon the (annual) recommendation of the police. Such persons must conspicuously advertise themselves as secondhand dealers, and they must keep a register of all their purchases, showing from whom they bought each article.

**Sharebrokers (No. 24).**—Under this Act every sharebroker must obtain an annual licence from the Commissioner of Stamps, who is to satisfy himself as to the applicant's character, and who may cancel a licence when it is proved to him that the licensee has within three years been guilty of "dishonest, dishonourable, or improper practices." A Stock Exchange or association of sharebrokers also requires a licence, which will not be given unless its rules are approved by the Governor in Council.

**Birds Nuisance (No. 25).**—This Act makes it the duty of local authorities to take effective action for the destruction of birds gazetted by the Government as injurious, provision being made for action concerted among such authorities. In case of default, an inspector, appointed by the Minister for Agriculture, is to do the local authority's work at that authority's expense, and the judge of such default is the Minister.

**Savings Bank Profits Amendment (No. 27).**—Within the province of Otago the profits of savings banks are hereby authorised to be applied to educational institutions, including the University of Otago. In the case of the university this provision is retrospective.

**Land Tax (No. 30).**—This Act, which in other respects continues

(s) See *infra*, p. 264, and Compilation Act, No. 39 of 1905, *infra*, p. 271.

(t) See *supra*, p. 229.



the previous rate of taxation, diminishes the taxation on mortgages of land from a penny in the pound of capital value to three farthings. This change is perhaps made because the mode of assessment of mortgages for land tax was felt to be inequitable in comparison with that of land.

**Kauri-Gum Industry Amendment (No. 31).**—This Act deals with licences for digging gum in the State forests.

**Local Bodies' Loans Amendment (No. 32).**—This Act, *inter alia*, requires that a special rate made as security for a loan for improvements under the principal Act of 1901 (*u*) shall be calculated as to yield, if necessary, 10 per cent. more than the charges in respect of the loan.

**Pacific Cable Extension (No. 33).**—This Act authorises contribution to the cost of any extension or deviation of the Pacific cable (authorised by Act of 1899) (*x*) which may be approved by a resolution of both Houses.

**Cook and other Islands Government Act Amendment (No. 34).**—Among other amendments to the Act of 1901, (*y*) this Act recognises the separate Native Council which already existed in Niue Island. It also empowers the Governor in Council to prohibit the importation from the Cook Islands to New Zealand of any plant, fruit, or other thing likely to introduce insect pests or disease.

**Australian Naval Defence (No. 35).**—A contribution, to be settled with the Australian Colonies, towards an Imperial naval force for protecting shipping in Australasian water, having been authorised for ten years by an Act of 1887, the present Act continues in perpetuity the authorisation of that contribution, as from the expiring of the previous Act.

**West Coast Settlement Reserves Act Amendment (No. 36).**—Different native reserves being subject to the provisions of two different Acts, passed respectively in 1856 and in 1892, the present Act is for the purpose of bringing them under the same administration.

**Land Titles Protection (No. 37).**—The preamble to this Act recites that of late natives have called in question in the Courts after the lapse of at least thirty years instruments of title issued under the Native Lands Act, 1865; that their actions have been dismissed; but that in such cases, owing to death, evidence is hard to procure, and alarm is thereby occasioned among Europeans. It is accordingly enacted that the consent of the Governor in Council shall be requisite for the bringing of such actions in future.

**Bank Holidays (No. 38).**—This Act increases the number of bank holidays from twelve to thirteen.

(*u*) See *supra*, p. 245.    (*x*) See *supra*, p. 229.    (*y*) See *supra*, p. 245, and *infra*, p. 267.

**Solicitors' Bills of Costs (No. 40).**—Solicitors' bills of costs could formerly be referred by a judge to a registrar of the Court for taxation. By this Act they may be referred by the party chargeable, without the intervention of the judge, to a registrar or to a stipendiary magistrate.

**Licensing Committees and Polls (No. 41).**—This Act provides, *inter alia*, for a recount when the result of any licensing poll is disputed. The polls referred to are: first, a triennial poll on the questions whether licences shall continue as at present, or be reduced or cease altogether; and secondly a poll to be taken, when the census shows decided increase of population, as to whether more licences should be granted.

**Inspection of Machinery (No. 42).**—This is a consolidating and amending Act. The machinery to which the Act applies is defined so as apparently to include all machinery whatever which is driven by any power other than hand or animal power; and the Governor may extend the scope of the Act, but not so as to include machinery driven by hand-power. The machinery so included and all boilers are subject to inspection by inspectors, whose power of making any requirements for safety that they think fit is unlimited. No person may use any machinery or boiler without a certificate from an inspector, which certificate is (except for agricultural machinery) good for one year only. Strict requirements are laid down by the Act as to the examination and certification by a Board of Examiners of all persons who are allowed to be in charge of engines and machinery of various kinds.

**Accident Insurance Companies (No. 43).**—This Act requires every company which insures against accidents to render every year to Government a statement of the business it has transacted and a balance-sheet.

**Government Railways Superannuation Fund (No. 45).**—This Act requires future employees of Government railways, and permits present employees, to contribute to a superannuation fund sums ranging from 3 per cent. of their wages, if their age at the commencement is under thirty, to 10 per cent., if their age at the commencement is over fifty. Employees over sixty who have served forty years may retire upon an allowance varying with their length of service and their rate of pay at retirement. Persons with less length of service may in special cases receive an allowance. Contributors medically unfit for duty are also to participate in the fund. When contributors retire or are dismissed or die before becoming entitled to an allowance, they or their representatives receive back what they have actually contributed without interest. When a man drawing an annual allowance from the fund dies before receiving the full benefit of his contributions, his widow or children are entitled to the difference. The fund is administered by a Board on

which employees are represented. The Government guarantees the fund against any deficiency.

**Poisons Importation and Carriage Amendment (No. 46).**—This Act is to provide for the importation of sheep-dip containing arsenic.

**Inebriates' Institutions Amendment (No. 47).**—This Act provides for the imprisonment of unruly inmates of inebriate institutions.

**Pharmacy Act Amendment (No. 48).**—This Act adds to the fees payable to the Pharmaceutical Society by registered chemists.

**Methodist Church of Australasia in New Zealand (No. 49).**—In Australia and New Zealand the United Methodist Free Churches, the Bible Christian Churches, and the Primitive Methodist Churches have entered into organic union with Wesleyan Methodist Churches. *Query*, why the new name thus made necessary requires statutory sanction; but this Act enacts that the New Zealand branch of the new united Church shall be "The Methodist Church of Australasia in New Zealand."

**Legislative Council Act Amendment (No. 50).**—This Act deals with Speakership and Chairmanship of Committees in the Legislative Council, and provides for such cases as that where the Speaker's term expires while Parliament is not in session.

**Companies Amendment (No. 51).**(z)—This Act contains, besides corrections of certain slips in the drafting of the Act of 1901, (a) provisions directed against the non-payment of calls by directors. It also enlarges the already stringent provisions of the Mining Companies Act, 1894, which provide, in the case of mining companies, for the keeping of accounts and the making of half-yearly statements, which shall be open to the inspection of shareholders and creditors. In regard to the register of mortgages, it repeals the requirement that the Registrar shall keep an index of that register.

**Midland Railways Petitions Settlement (No. 52).**—The New Zealand Midland Railway Company, Limited, having made default in the performance of a contract with the Government, the Government took possession of the railway. Under this Act a certain sum is to be paid in satisfaction of the consequent grievance of the debenture holders and shareholders, who appear to have no legal remedy.

**Military Pensions (No. 54).**(b)—This Act extends the provisions of the Military Pensions Act, 1900, (c) to the 8th, 9th, and 10th Contingents sent to South Africa.

**Factories Amendment (No. 55).**—This Act requires the permission of an inspector in every case in which a woman or boy works overtime.

(z) See Consolidating Act No. 53 of 1903, *infra*, p. 261.

(a) See *supra*, p. 248.

(b) See *infra*, p. 259.

(c) See *supra*, p. 247.



It also extends the provision of the Factories Act, 1901, (*d*) directed against the risk of infection of food by diseased employees, so as to cover also textile fabrics. It also slightly modifies the provision as to a minimum wage, with the effect of reducing the minimum in some cases.

**Native and Maori Land Laws Amendment** (No. 56).—The most noticeable provision of this Act is one whereby orders of the Native Land Court, which have the effect of mortgages on land owned by natives, are not to confer upon the mortgagee power of sale till after five years.

**Town Main Streets** (No. 57).—Under this Act the Minister of Lands may in special cases permit the main streets of new towns to be less than ninety-nine feet wide, as previously required, but not less than sixty-two feet.

**Municipal Corporation Amendment** (No. 59). (*e*)—This Act, *inter alia*, enlarges the already existing requirement for the provision of an open space attached to every new house in a town. It restricts the power of local authorities to require a minimum cubic space in all rooms to cases where a house is occupied by more than one family. It extends the requirements of inspection of public buildings to churches.

**Public Health Amendment** (No. 60).—This Act extends in several particulars the power of local authorities for preventing the spread of infectious diseases, and it also facilitates the combination of local areas for such purpose.

**Workers' Compensation for Accident Acts Amendment** (No. 61).—This Act extends the provisions of the principal Act to "workers in agriculture," agriculture having apparently not been covered by the phrase "industrial work" in the principal Act. It also reduces to one week instead of two weeks the minimum time for which a worker claiming compensation must have been disabled.

**1903** (*f*) Acts passed—Public, 96 ; Local and Personal, 42 ;  
Private, 2.

**Weights and Measures** (No. 5). (*g*)—This Act, besides consolidating the existing law as to standards of weights, etc., inspection of weights and measures, and penalties for false weights and measures, authorises the introduction by proclamation of the decimal standard and makes it unlawful thereafter to use any other standard. It also empowers the Governor from time to time to proclaim standards for electricity, temperature, pressure, and gravity.

**First Offenders' Probation Amendment** (No. 6).—An Act of 1886

(*d*) See *supra*, pp. 248, 249.

(*e*) Included in No. 21 of 1904, *infra*, p. 267.

(*f*) Contributed by Godfrey R. Benson, Esq.

(*g*) See *infra*, p. 267.

empowers Courts to sentence first offenders to a period of supervision by a "Probation Officer," instead of imprisonment, but with a liability to imprisonment if their conduct is unsatisfactory. The chief amendment made by this Act is to make it the duty of the Probation Officer to inquire, when required, as to the character of a first offender before the original sentence is decided.

**Inebriates' Institutions** (No. 7).—This Act provides that any of the existing institutions for inebriates may be reserved by the Governor for the reception of such inebriates as are certified by medical authority to be curable.

**Supreme Court Judges** (No. 9).—Under this Act future judges must retire at seventy-two and present judges may retire with a pension at that age.

**Wireless Telegraphy** (No. 11).—Under this Act the Governor may establish stations for wireless telegraphy, and no private person may do so without his leave.

**Dairies** (No. 13).—This Act, besides extending the time within which loans for dairies may be granted, provides for the prevention of pollution of rivers by dairies.

**Local Government** (No. 15).—This Act (*inter alia*) raises the limits of certain rates, provides for construction of tramways when the principal Act is not in force, authorises the provision of fire brigades out of the county fund, empowers county councils to license and control public billiard-rooms other than those at hotels, and enacts a closing hour for such billiard-rooms.

**Dramatic Copyright** (No. 16).—This Act provides penalties, in addition to damages in a civil action, for infringements of dramatic copyright.

**Legitimation** (No. 19).—By an Act of 1894 legitimation by subsequent marriage was introduced. There is in it an exception for the case when at the time of the birth of the child there was a lawful impediment to the marriage of the parents. This Act takes the case of a deceased wife's sister or a deceased husband's brother out of the category of such lawful impediments.

**Commissioners** (No. 20).—This Act provides certain powers and immunities for all commissioners appointed by the Governor to inquire into matters of administration or legislation or suggested legislation or the conduct of any public officer. Such commissioners are given all the powers of a court of law in relation to obtaining evidence. Witnesses and counsel before them are put in the position of witnesses and counsel in a court of law; and the commissioners are given the power of awarding costs against any party to an inquiry in accordance with a scale to be drawn up by two judges.

**Death Duties** (No. 21).—This Act provides that, when the effect of a

will is altered by an order of the Court under the Testators' Family Maintenance Act of 1900 (*h*), the death duties payable shall be such as would have been payable if the provision made by the Court had been made by the will.

**Intestates' Estates (No. 22).**—By this Act, when an intestate man leaves a widow but no children, or an intestate woman leaves a widower but no children, the widow or widower is entitled to £500 out of the estate (or the whole net estate if it be less than £500) and, in addition, to such share in the residue as she or he was under the previous law entitled to in the whole estate. (This share is the same in the case of a widow and of a widower.)

**National Library (No. 23).**—Under this Act a copy of every book published in the Colony is to be given to the General Assembly Library.

**Police (No. 24).**—This Act deals with billiard-rooms, prohibits the unauthorised use of words denoting Government patronage, requires notice to the public of the use of any poison for destroying weeds near a road, penalises the removal of materials from a foreshore, and prohibits unauthorised placing of advertisements, etc., upon land belonging to the Crown or to any local authority.

**Bush and Swamp Crown Lands (No. 25).**—The Governor is authorised by this Act to grant remissions of rent and exemptions from local rates for a few years to selectors of bush, swamp, or scrub land.

**Water-power (No. 26).** (*i*)—"Subject to any rights lawfully held, the sole right to use water in lakes, falls, rivers, or streams for the purpose of generating or storing electricity or other power shall vest in his Majesty." The Governor may delegate powers in regard to local authorities, and private persons may obtain leave to use water-power for electric lighting or for driving machinery not used for generating electricity.

**Sand-Drift (No. 28).**—This Act is to come into force in any district if proclaimed by the Governor upon petition from a local authority or private persons. When it is in force, the Minister of Lands may form a scheme directing measures for keeping back sand-drifts, and apportioning the cost among the landowners affected. The operation of such a scheme may be delegated to a local authority. To ensure fair apportionment of cost an appeal to the stipendiary magistrate to vary the scheme is allowed.

**Military Pensions (No. 31).** (*k*)—This Act somewhat extends the power of granting pensions and allowances to persons who suffered from wounds or illness during service in South Africa.

**Sea Fisheries (No. 32).**—This Act imposes a penalty for the wilful

(*h*) See *supra*, p. 233, and *infra*, p. 281.

(*i*) Included in Compilation Act, No. 53 of 1905, *infra*, p. 272.

(*k*) See *supra*, pp. 247, 256.



destruction of fresh fish. It also extends to all boats used for taking fish or oysters for sale the requirement of a licence previously imposed on some of them, makes further provisions for the supervision of oyster fisheries, and allows the Governor to establish experimental oyster-farms and to appoint boards of management for fish hatcheries.

**Products Export** (No. 35).—This Act provides for the inspection of grain, hops, hemp, fruit-pulp, apples, pears, and poultry intended to be exported, and for the certifying of their quality and condition. No such produce may be exported (unless to countries which may be specially excepted from the Act by the Governor) without a stamp, mark, or certificate in writing showing its quality and condition. The Act also amends the existing provisions of a like nature in regard to the export of meat. It repeals, however, the Flax Grading and Export Act, 1901. (*l*)

**Land and Income Assessment** (No. 37).—The chief amendments (to the Act of 1900 (*n*)) made by this are in the graduation of the tax on the unimproved value of land. There are now no less than forty-nine steps in the graduation; land of which the unimproved value is under £5000 paying the rate of "ordinary land tax" fixed by the annual Land Tax and Income Tax Act, viz. at present 1*d.* in the pound (*o*), while land of which value is as much as £5000 but under £7000 pays 1*½d.* in the pound extra, and land of the value of £210,000 or over pays 3*d.* in the pound extra. Under the new scale the tax on landed estates worth less than £25,000 is lower, and that on larger estates is higher than under the old scale.

**Land Tax and Income Tax** (No. 38).—The rates of tax are the same as last year. The rates of ordinary land tax are 1*d.* in the pound (on the unimproved value) for land, and ¾*d.* in the pound for mortgages on land. The rates of income tax are for companies and for individuals with incomes exceeding £1000, 1*s.* in the pound; for individuals with incomes under £1000, 6*d.* in the pound.

**Municipal Corporations** (No. 41).—This Act, *inter alia*, empowers local authorities to control or prohibit advertisements on premises adjoining public streets; also to regulate certain matters in respect to traffic on roads, *e.g.* to prescribe the number of horses that shall be required to drag a load of given weight, also to construct along any street tracks for the use of cyclists only.

**Labour** (No. 45).—This Act creates a Department of Labour under the direction of the existing Minister of Labour. The chief function with which it is charged appears to be the collection of information for an annual report upon the condition of labour.

(*l*) See *supra*, p. 250.

(*n*) See *supra*, p. 237.

(*o*) See No. 33.

**Gold Duties** (No. 47).—By this Act gold duties may to the extent of one-half be apportioned by the Governor among the local authorities interested in the goldfields.

**State Fire Insurance** (No. 49).—The Government is empowered by this Act to set up a fire insurance office with a borrowed capital of £100,000. Half the profits are to be distributed every three years in bonuses to actual insurers—the claim to a bonus is apparently not to be lost or diminished through insurer's having received compensation for loss by fire. The balance of the profits will be carried first to a sinking fund for redemption of debt and afterwards to a reserve fund.

**Australian and New Zealand Defence** (No. 50). (*p*)—This Act carries out, so far as concerns New Zealand, the agreement made between the Admiralty and the Governments of Australia and New Zealand as to the minimum strength of the naval force to be kept on the Australian station and the colonial contribution to be made to its cost.

**Fisheries Conservation** (No. 51).—This Act empowers the Governor to make regulations for the licensing of trout and perch fishing and for the prevention of pollution of trout and salmon rivers.

**Fisheries Encouragement** (No. 52).—This is an annual Act continuing for a year the bonus on canned and cured fish for export.

**Companies** (No. 53) (*p*<sup>1</sup>).—This is mainly a consolidating Act, repealing the Acts of 1900, 1901 (*p*<sup>2</sup>), and 1902 (*p*<sup>3</sup>).

**Scenery Preservation** (No. 54). (*q*)—This Act provides for the preservation of public lands and the compulsory purchase of private lands which a Commission recommends should be kept or acquired by the Colony for its "scenic or historic interest," or because there are thermal springs upon it.

**Patriotic Funds** (No. 58).—Various funds having been raised by subscription for the benefit of the members of the contingents sent to South Africa, this Act provides for the disposal of the unexpended balances.

**Industrial Conciliation and Arbitration** (No. 62).—This Act imposes penalties upon employers, workers, or combinations of either taking "provisions with the intention to defeat the provisions of" any award under the principal Act of 1900, (*r*) also upon employers dismissing men merely because they are members of unions or entitled to the benefit of any award. It also makes it the duty of factory inspectors to see that the provisions of awards are carried out.

**Life Assurance** (No. 63).—This Act allows a minor of fifteen to

(*p*) See *infra*, p. 271.

(*p*<sup>1</sup>) See *infra*, p. 268.

(*p*<sup>2</sup>) See *supra*, p. 248.

(*p*<sup>3</sup>) See *supra*, p. 256.

(*q*) See *infra*, p. 280.

(*r*) See *supra*, p. 238, and see Compilation Act, No. 32 of 1905, *infra*, p. 271.

assure his life. The insurer is to be presumed to be fifteen until it is proved that the receiving company (or the person taking over the policy) knew that he was less. The Act further provides that when a policyholder dies leaving a will, the policy moneys shall not be applied in payment of his debts or legacies unless the will expressly so directs.

**Imprisonment for Debt** (No. 64).—Before this Act committal to prison for non-payment of a judgment debt was restricted to certain cases, of which the chief were fraud and proof against or admission by the debtor that he had been able to pay without depriving himself or his family of reasonable maintenance. This Act throws upon the debtor the burden of proof.

**Legal Practitioners** (No. 65).—This Act admits to practice in New Zealand, without further examination, barristers or solicitors who have practised for three years in the United Kingdom. It further authorises the Governor to order the admission to practice of barristers or solicitors from any part of the Empire in which due securities are taken for their competency, and in which the like privileges are given to New Zealand.

**Orchard and Garden Pests** (No. 67).—This Act gives drastic powers to the Governor for the extirpation of certain pests affecting orchards and gardens.

**Maoris** (No. 68).—The principal provisions of this Act relate to the delegation by Maori Councils constituted under the Act of 1900 (*s*) of part of their functions to village committees of Maori, penalties on the introduction of drink into Maori villages, the registration of Maori dogs, the regulation of kauri-gum fields, and the protection of Maori burial-places.

**Railway Servant** (No. 69).—In computing the deductions to be made for superannuation from a man's pay, what he receives for overtime is not to be reckoned in his pay.

**Agricultural and Pastoral Societies** (No. 70).—This Act empowers the Societies in question to raise money on mortgage for building and improvements and the purchase of further land.

**Kauri-Gum Industry** (No. 71).—This Act makes it possible to grant mining-leases on kauri-gum reserves, provided that adequate measures are taken for the protection of the kauri-gum industry under the principal Act of 1898. (*t*)

**Secondary Schools** (No. 73). (*u*)—This Act (*inter alia*) requires that every pupil admitted to a secondary school shall have obtained a certificate of competency in the subjects of a certain standard in the elementary schools; requires every endowed secondary school to spend

(*s*) See *supra*, p. 240.

(*t*) See *supra*, p. 222.

(*u*) Included in No. 20 of 1904, *infra*, p. 267.



a certain proportion of its income in scholarships or offer a certain number of free places; gives a grant to every secondary school (endowed or otherwise) which provides free places; gives the Minister of Education further powers for the establishment of secondary schools; and requires that every private secondary school shall be open to inspection. A subsidy is also given to meet every voluntary bequest or contribution for the support of any secondary school.

**Statutes Compilation (No. 75).**—An Act of the previous year (*x*) created special facilities for the preparation and passing of consolidating Bills. This Act provides that such Bills may include minor amendments of the Acts to be consolidated, such as are requisite for the purpose of giving effect to implied repeals, securing uniformity of expression, etc. Special attention must here, however, be drawn to such proposed amendments, and they will be liable to amendment in Committee.

**Preferential and Reciprocal Trade (No. 78).**—This Act imposes an additional duty on certain imports, previously liable to duty, when they are not the produce or manufacture of any part of the British dominions. These articles include: basketwork, bicycles, etc., boots, candles, carts and carriages, cement, china, cloth, cordage, earthenware, furniture, fish, firearms, glass, hardware, hops, nails, iron pipes, lamps, paper, plate, pumps, and a few other things. In the case of cement the additional duty equals the duty in force under the general tariff for the time being; in the other cases it equals half that duty. The Act also imposes an *ad valorem* duty of 20 per cent. on certain articles, not being the manufacture of any part of the British dominions, which were previously free of duty, and of which rails and sheets, rods, bolts, bars and plates of iron are the chief.

**Public Domains (No. 79).**—The principal provisions of this Act are for the prevention of building and the preservation of natural bush on domains or reserves set apart for public recreation, and for enabling local authorities to contribute to the management or improvement of any part of the lands under the Domain Board, though such lands may be outside their own localities.

**Coal Mines (No. 80).** (*y*)—This Act provides that every miner shall be entitled to overtime pay for employment exceeding eight hours (bank to bank) in a day. It provides that miners' associations may establish medical clubs, and that thereafter mineowners shall be bound to deduct the required contributions from the wages of their men and pay them over to the medical clubs. It enacts that the bed of any navigable river (with the minerals under it) shall, except when it has been granted

(*x*) See *supra*, p. 251.

(*y*) Included in No. 15 of 1905 (*infra*, p. 269), and Compilation Act, No. 36 of 1905, *infra*, p. 271.

by the Crown, be deemed to have always been vested in the Crown. It provides that every accident in a mine shall be *prima facie* evidence of negligence on the part of the owner. It proceeds to make provisions in regard to compensation for injury or death arising from the non-observance in any mine of any of the provisions "of this Act." This perhaps means "of the principal Act," of which this Act is to form part, for no bodily injury could apparently arise from non-observance of the new provisions of this Act. But as the provisions of the principal Act are elsewhere described as such, the question is puzzling. The compensation may be recovered by way of damages for a tort committed by the owner, in any case in which the injury or death was not solely due to the negligence of the sufferer.

**Mining (No. 81).**(*y*<sup>1</sup>)—This Act applies to mines other than coal mines the same provisions as to compensation for injury or death as are contained in the last-named Act. It extends the Act of 1902. (*z*)

**Public Health (No. 82).**—This Act amends the Act of 1900, (*a*) and, *inter alia*, gives district health officers powers to pull down insanitary buildings and execute other sanitary works when the local authority fails to do so; it also empowers them, by condemning a building as unfit for human occupation, to make it unlawful for anybody to remain in occupation of it after twenty-one days, and imposes a penalty of £10 a day upon every person continuing longer to occupy it. It transfers the duty of providing infectious diseases hospitals from local authorities to hospital boards. It also requires the licensing and inspection of all private hospitals.

**National Scholarships (No. 84).**(*b*)—This Act provides in each education district a number of scholarships, varying with the population, to be given upon examination in the elementary school subjects and to be tenable in secondary schools, and in each university district scholarships tenable in the university.

**Mutual Fire Insurance (No. 86).**—This is an Act to facilitate the formation of mutual fire insurance associations by owners of farms or isolated property.

**Juvenile Smoking Suppression (No. 87).**—This Act imposes penalties upon any one who sells cigarettes, cigars, or tobacco to a person under the age of fifteen and upon any person under that age who smokes.

**Workers' Compensation for Accidents (No. 88).**—By this Act, extending the principal Act of 1900, (*c*) when a contract to perform work in a mine is let to contractors who do not employ "wages-men," or who actually perform any part of the work themselves, they are to be deemed

(*y*<sup>1</sup>) Included in Compilation Act, No. 39 of 1905, *infra*, p. 271.

(*z*) See *supra*, p. 253.

(*b*) Included in No. 20 of 1904, *infra*, p. 267.

(*a*) See *supra*, p. 234.

(*c*) See *supra*, p. 235.

to be workers: claims under £200 may be heard by stipendiary magistrates; illegitimate children are placed among the relatives who have a claim to compensation in case of death.

**Stock** (No. 91).—The Governor is hereby empowered to prevent the introduction into the Colony of any substance which he thinks may introduce cattle diseases; and pest regulations made under the Stock Act, 1893, restricting the importation of bones, bone dust, and other animal manures are validated.

**Public Works** (No. 93). (*d*)—An owner selling land which does not front on a road must by this Act dedicate a public road giving access to it. The Act also provides, *inter alia*, for the regulation of heavy traffic, the removal of obstacles from river-beds, and the taking of land for camping grounds, rifle ranges, etc., and for forest plantations and recreation grounds and for the preservation of scenery in the same manner as it could previously be taken for public works.

**Coastwise Trade** (No. 95).—By this Act the Governor may prohibit or restrict coastwise trading, or trading between New Zealand and other British territory by the ships of any country which itself prohibits or restricts coastwise trading by British ships.

**Shipping and Seamen** (No. 96). (*e*)—This is a consolidating Act with some amendments. The most interesting provision in it is one which empowers the Courts to rescind, when they see fit, any contract between a seaman and his employer.

**1904** (*f*)      Acts passed—Public, 60; Local and Personal, 20;  
Private, deemed to be Public, 5.

**Domain Boards** (No. 4).—The Governor may delegate the management of portions of the domain to special boards to be nominated by him for the purpose.

**Fencing** (No. 5).—Every covenant between landowners which modifies their rights and liabilities in regard to fencing is to run with the land so as to bind assigns, provided that it is registered as an interest in land.

**Police Offences** (No. 9). (*f*<sup>1</sup>)—Penalties are imposed on everybody concerned in a boxing match for admission to which a charge is made, or for which the boxers, or either of them, receive any remuneration or prize, unless a permit has been given for the purpose by the police upon the application of some registered club whose rules have been approved by the Governor in Council. The Governor is further authorised to make rules for the regulation of boxing matches

(*d*) Included in Compilation Act, No. 53 of 1905.

(*f*) Contributed by Godfrey R. Benson, Esq.

(*e*) See *infra*, p. 274.

(*f*<sup>1</sup>) See *infra*, p. 283.



**Law Amendment (No. 12).** (g)—This Act provides that any written acknowledgment of receipt of part of a debt in satisfaction of the whole shall operate as a discharge of the whole; that judgment against one of several persons jointly liable shall not be a bar to action against the others except to extent to which the judgment has been satisfied; that no executor or administrator shall be personally liable under any covenant entered into by a testator or intestate as a lessee of land; that validity of a will may not be impeached after twelve years from the date of probate; that in administration suits costs shall be given to the plaintiff out of the estate unless the Court certifies that the action was brought and continued upon reasonable grounds; and that voluntary conveyances shall not be voided under 27 Eliz. c. 4 if, in fact, they were made *bonâ fide* and without fraudulent intent. It further extends the powers of the Supreme Court to relieve against forfeiture; and it empowers trustees under will or deed and executors and administrators to spend capital on improving the estate and to raise money by mortgage of it for the purpose.

**Land Drainage (No. 13).**—This is a consolidating and amending Act. It deals in the main with the constitution and powers of the public drainage boards and with the powers of public authorities for the purpose of irrigation. There are also, however, provisions under which one private owner can, by the order of a magistrate sitting with two assessors, obtain power to carry out drainage works for the benefit of his own land upon the land of another.

**Maori Antiquities (No. 14).**—The Act strengthens the Act of 1901 (h) aimed at restraining the removal of Maori antiquities out of the country.

**Supreme Court: Judges' Salaries (No. 16).**—This fixes the judges' salaries at £2000 for the Chief Justice, and £1800 for each of the five puisne judges.

**Divorce and Matrimonial Causes (No. 18).** (i)—This is one of the "compiling Acts" passed under the Statutes Compilation Act, 1902. (k) It may be mentioned that divorce is granted on the ground of adultery (of either party); or of desertion; or of habitual drunkenness coupled (on the part of the husband) with neglect to support his wife or with habitual cruelty, or (on part of the wife) with habitual neglect of and unfitness to perform domestic duties; sentence to imprisonment or penal servitude for seven years for attempting to take the life of the petitioner.

**Marriage Acts Compilation.**—No. 19 consolidates five Statutes. (l)

(g) Included in Consolidation Act, No. 36 of 1905, *infra*, p. 271.

(h) See *supra*, p. 243.

(i) See *infra*, p. 289.

(k) See *supra*, p. 251. It includes No. 42 of 1898, *supra*, p. 225.

(l) It includes No. 72 of 1900, *supra*, p. 241.

**Education Acts Compilation.**—No. 20 consolidates nineteen Statutes.<sup>(m)</sup>

**Local Elections (No. 21).**—This is a consolidating and amending Act.<sup>(n)</sup>

**Cook and other Islands Government (No. 22).**—This Act provides for the taking of land by the Government, especially for the development of pearl and other fisheries. It amends the principal Act of 1901.<sup>(o)</sup>

**Payment of Members (No. 24).**—This is a consolidating and amending Act.<sup>(p)</sup>

**Land Tax and Income Tax (No. 25).**—The rates of tax hereby fixed are: for land, 1*d.* in the pound of assessed capital value; for mortgages,  $\frac{3}{4}$ *d.* in the same; for income of individuals up to £1000, 6*d.* in the pound; for the same above £1000 and for income of companies, 1*s.* in the pound.

**County Government and Fire (No. 26).**—This Act, *inter alia*, provides for the appointment, by county authorities, of fire inspectors with drastic powers in cases of fire.

**Native Land Duty (No. 28).**—The duty hitherto chargeable upon any alienation of native land is abolished.

**Weights and Measures (No. 29).**—This Act substitutes a revised table of equivalents for that contained in the Act of the previous year<sup>(q)</sup> for establishing the decimal system.

**Midwives (No. 31).**—The registration of midwives and the training and certification of future midwives is provided for.

**Destitute Persons (No. 32).**—The wages of a person who has, by desertion, left a wife or child destitute, may be attached under this Act. It gives priority over all other liabilities to a charge upon such a person for maintenance.

**Public Health (No. 37).**—This Act relates chiefly to infectious hospitals and mosques.

**University Degrees (No. 38).**—This Act creates in the University the following new degrees: Doctor of Literature, Master of Laws, Master of Surgery, Master of Science; Bachelor, Master, and Doctor of Veterinary Science, Dental Surgery, Engineering (under the following sub-heads: Mechanical, Electrical, Civil, Mining, Metallurgical, Naval Architecture), Agriculture, Public Health, Commerce.

<sup>(m)</sup> They include various Acts mentioned above, viz. No. 16 of 1900 (p. 232); No. 17 of 1901 (p. 242); No. 29 of 1901 (p. 243); No. 33 of 1901 (p. 244); No. 54 of 1901 (p. 247); No. 73 of 1903 (p. 262); No. 84 of 1903 (p. 264), and see *infra*, p. 237.

<sup>(n)</sup> It includes, *inter alia*, Act No. 59 of 1902, *supra*, p. 257.

<sup>(o)</sup> See *supra*, p. 245.

<sup>(p)</sup> The four Acts consolidated include No. 46 of 1900 (*supra*, p. 237), and No. 43 of 1901 (*supra*, p. 247).

<sup>(q)</sup> See *supra*, p. 257.

**Mining Companies** (No. 39). (*r*).—This Act, amending No. 53 of 1903 (*s*), requires a mining company to be registered either as (1) a limited company, or (2) a no-liability company. Provisions are made for the transfer of shares; the payment of dividends; the disqualification of directors; the lodging of a half-yearly report and statement of the receipts and expenditure of the company at the company's registered office, to be open to inspection by the shareholders and creditors of the company; and also provisions relating to foreign mining companies, which must have an office for the registration and transfer of shares.

**Native Land Rating** (No. 41).—Under this Act native land which has a European occupier, or which has been bought or leased for value, or which is within ten miles of a borough or town district, or within five of a Government or county road, will be rated in full; while other native land is liable to one-half the rates only, or, if the title is not ascertained, is exempt altogether.

**Licensing Law** (No. 42).—This Act, *inter alia*, prohibits sale of liquor to persons under the age of eighteen (not being resident on the premises), sending a person under thirteen to fetch liquor, and selling liquor to a Maori for consumption off the premises.

**High Commissioner** (No. 47).—This Act authorises the appointment of a High Commissioner in lieu of the Agent-General in the United Kingdom.

**Fertilisers** (No. 48).—Every seller of fertilisers is to be registered, and is to deposit with the Secretary for Agriculture a statement as to the ingredients contained in every brand of fertiliser which he sells. Inspectors are to be appointed who will have power (without request from any buyer) to take samples for analysis of any fertiliser before or after sale. Provision is also made for analysis by a public analyst at the request and cost of the buyer.

**Foreign Insurance Companies** (No. 50).—Deposits (with the Public Trustee) are already required to be made by any foreign insurance company doing business in the Colony. This Act deals with such deposits.

**Shops and Offices** (No. 52).—This Act consolidates (*t*) with amendments the Act relating to hours, holidays and half-holidays, sanitation, seats for female assistants, etc., in shops and offices.

**Industrial Conciliation and Arbitration** (No. 53).—Doubts had arisen as to the scope of the terms "employer," "industry," and "worker" in the principal Act of 1900. (*u*) This Act resolves them.

**Dentists** (No. 57).—Dentists are required to register and qualify.

(*r*) A statement of the law relating to companies may be found in a memorandum prepared for the Imperial Conference, 1907, Cd. 3589, p. 40.

(*s*) See *supra*, p. 261.

(*t*) No. 24 of 1901 (*supra*, p. 243) is included in the consolidation, and see *infra*, p. 272.

(*u*) See *supra*, p. 238; and see Compilation Act, No. 32 of 1905, *infra*, p. 271.



**1905**(*x*)      Public Acts passed, 64; Local and Personal, 44.

**Old Age Pensions** (No. 2).—This Act raises the amount of pension fixed in the principal Act of 1898(*y*) to £26 a year, diminished by £1 for every complete £ of income, and £1 for every £10 of net accumulated property. It provides further that “in computing the amount of the pension of a husband or wife the net capital value of all the accumulated property of each shall be deemed to be half the total net capital value of all the accumulated property of both.” It also provides that wherever any part of the accumulated property of any claimant consists of property of any tenure used by him only for residence, £150 shall be deducted from his accumulated property. Here it will be noticed that a person owning a freehold is not regarded as better off than a person with a brief residue of a lease.

**Criminal Code Amendment** (No. 6).—All Courts are given power for excluding the public from trials and prohibiting reports where the interests of public morality require this.

**Motor Registration** (No. 8).(*z*)—This Act, providing for the registration and marking of motors, is to apply only within boroughs and counties which adopt it.

**Commissioners Act Amendment** (No. 13).—This Act confers on judges who are appointed upon commissions of inquiry the powers, privileges, and immunities which are possessed by them in the exercise of their ordinary civil jurisdiction.

**Offensive Publications** (No. 14).—This Act provides that mere ignorance of the nature of the publication shall not be a defence to a person charged with taking part in the publication of indecent matter.

**Coal-mines Act Compilation** (No. 15).—This Act consolidates the law on the subject contained in eight Statutes.(*a*)

**Evidence** (No. 16).—This is a consolidating and amending Act.(*b*) The following departures from English precedent may be noticed: large powers are given to the Court to protect a witness from unnecessarily offensive cross-examination. Confessions made to a minister of religion in his professional capacity are not to be divulged without consent, and in civil proceedings communications to a physician or surgeon are similarly privileged, except when the sanity of the patient

(*x*) Contributed by Godfrey R. Benson, Esq.

(*y*) See *supra*, p. 220.

(*z*) Repealed by No. 32 of 1906, *infra*, p. 273.

(*a*) Three of them have been reviewed above, viz. Nos. 46 and 47 of 1901 (p. 240), and No. 80 of 1902 (p. 263); and see amending Act, No. 35 of 1907, *infra*, p. 236.

(*b*) Fourteen Statutes are repealed by this Act, but only one is included in the period under review, viz. No. 34 of 1901 (*supra*, p. 244).

or a question as to life assurance is in dispute; but communications made for any criminal purpose are not within either of these privileges. In criminal proceedings confessions induced by threats or promises are not to be rejected unless the judge holds that the threat or promise was likely to induce a false statement. Law books relating to any country may be referred to as evidence of the law of that country.

**Land Tax and Income Tax (No. 20).**—The rates of tax are: for land, 1*d.* in the £ of assessed capital value; for mortgages,  $\frac{3}{4}$ *d.* in the £ of assessed capital value; for income of companies of non-resident taxpayers, 1*s.* in the £; for other incomes, 6*d.* in the £ up to £1000, 1*s.* in the £ for the excess over £1000.

**Timber and Flax Royalties (No. 25).**—This Act provides for the payment to local authorities of one-half of the revenue received from the sale of timber and flax on Crown lands.

**Native Townships Local Government (No. 28).**—This Act provides for the election of a council in any native township to which the Governor may by proclamation apply the Act. The council will have the powers of a borough council in regard to streets, drains, water-works, electric lighting works, public works generally, the suppression of nuisances, borrowing money for public works and the making and enforcing of bylaws.

**Electoral (No. 29).**—This is a consolidating and amending Act. The last consolidating Act on the subject was passed no longer ago than 1902,<sup>(c)</sup> and the amendments made by the present Act are not of general interest. Among interesting points in the electoral law of New Zealand are the disqualification for membership of Parliament of any person who, *otherwise than as a member of a company*, is interested in the execution or enjoyment of any contract with Government, and the procedure by which a person absent from the district in which he is a voter may record his vote. The provision by which it is sought to secure that the register of voters shall be kept continuously up to date deserve the study of those interested in our own election law. As is well known, the electoral system of New Zealand is that of manhood and womanhood suffrage, and no voter may vote in more than one constituency. Standing provision is made for redistribution after every census. In such redistribution approximate equality in population of electoral districts is aimed at, except that the proportion of representatives to electors is higher for the rural than for the urban constituencies.

**Public Trust Office Amendment (No. 30).**—By this Act all trustees may, unless expressly prohibited, appoint the Public Trustee to be sole trustee in their place, provided that the Public Trustee himself consents.

(c) See *supra*, p. 252.

**Medical Practitioners' Registration (No. 31).**—The practitioners entitled to registration under this Act (which amends an Act of 1869) are: graduates in medicine and surgery of the New Zealand University; persons registered or qualified for registration as medical practitioners in the United Kingdom; holders of a diploma given after five years' study in medicine and surgery "by a university in any British possession"; holders of a similar diploma, so given, by any other university which in the opinion of the Governor in Council is equal in status to that of New Zealand."

**Industrial Conciliation and Arbitration Acts (No. 32).**—This is a "compilation" Act comprising five earlier Statutes. (*d*)

**Criminal Code Amendment (No. 2), (No. 33).**—By this Act words likely to injure the reputation of any person or to injure him in his trade or profession are punishable as an offence, if spoken at a public meeting of twenty or more persons; but the consent of a judge or magistrate is necessary before a prosecution can be begun.

**Property Law (No. 36).**—This is an Act to "consolidate, extend and simplify" the law relating to property. Its most interesting provisions have been in force for many years. (*e*) They include not only provisions from the English Conveyancing Acts, but a further very drastic simplification of conveyancing, in which the repeal of the Statute of Uses and the abolition of so much of the conveyancer's art as is based upon that Statute form the most striking feature.

**Mining Acts (No. 39).**—This is a "compilation" Act comprising ten Statutes. (*f*)

**Bills of Exchange Act Amendment (No. 40).**—By this Act branch banks are for most purposes of the principal Act of 1883 to be deemed to be independent banks. All banks who have credited a customer with the amount of a crossed cheque before collection are protected.

**Australian and New Zealand Naval Defence (No. 41).**—By this Act the agreement between Australia and New Zealand sanctioned by the Act of 1903 (*g*) may be varied by joint consent of the parties, provided that the strength of the naval force is not diminished nor the sum contributed by New Zealand increased.

**Workers' Dwellings (No. 42).** (*h*)—By this Act the Governor may set apart portions of any Crown land or of land acquired under the

(*d*) Four are summarised above, viz. No. 51 of 1900 (p. 238); No. 37 of 1901 (p. 244); No. 62 of 1903 (p. 261); and No. 53 of 1904 (p. 268). See amending Act, *infra*, pp. 273, 279.

(*e*) The repealed Acts, however, include No. 20 of 1901 (*supra*, p. 242), and No. 12 of 1904 (*supra*, p. 266), and see *infra*, p. 237.

(*f*) Six have been summarised above, viz. No. 38 of 1898 (p. 223); No. 29 of 1899 (p. 229); No. 64 of 1900 (p. 241); No. 60 of 1901 (p. 249); No. 22 of 1902 (p. 253); and No. 81 of 1903 (p. 264).

(*g*) See *supra*, p. 261.

(*h*) See *infra*, pp. 273-276.



Land for Settlements Consolidation Act, 1900, (i) for the purpose of providing dwellings for landless "workers." On land so set apart the Minister for Labour may erect workers' dwellings. These are to be let by the Land Board, either on weekly tenancy at a rent at the rate of 5 per cent. per annum on the capital value in addition to a sum for fire insurance and rates, or on renewable leases for fifty years at the like rent. In the latter case the lessee may elect to acquire the freehold, either by payment of the original capital value after the lapse of not less than twenty-five years, or by monthly payments (in addition to the sum for fire insurance and rates) at the rate of 8 per cent. per annum for thirty-two years, or 6½ per cent. per annum for forty-one years, or by means of an insurance for his life or a term of years. The management of workers' dwellings thus erected (but not the power to erect them) may be transferred to a local authority. No disposition whatever can be made of the lease or freehold of such a worker's dwelling without the consent of the Land Board.

**Shops and Offices Act Amendment (No. 43).**—This Act amends the principal Act of 1904, (k) and fixes hours for each of a number of kinds of shop specified therein after which no shop assistant may be employed in or about the shop, and hours for all shops before which no shop assistant may be so employed. The former hours are different on the weekly statutory half-holiday, on one longer day allowed in the week, and on the remaining days of the week.

**Workers' Compensation for Accidents (No. 50).**—This Act, to be read with the Act of 1900, (l) fixes the minimum compensation for total or partial disablement at £1 a week when the worker's previous remuneration was not less than 30s. a week. It also empowers the Arbitration Court to order, or the parties to agree to, compensation by a lump sum instead of weekly payments.

**Public Works Acts Compilation (No. 53).**—Six Acts (m) are amalgamated in this computation.

**Teachers' Superannuation (No. 54).**—This Act establishes a superannuation fund for all future teachers, for all other persons in future taken into employment in the Education service who may wish to contribute to the fund, and for all persons already permanently employed in the Education service who may choose to contribute to it. The Government makes an initial contribution of £5000 to the fund, and guarantees the sufficiency of the fund for the future; for the rest the fund is made up of contributions deducted from the contributors' salaries and ranging from 5 per cent. of such salary when

(i) See *supra*, p. 240.

(k) See *supra*, p. 263.

(l) See *supra*, pp. 235-236.

(m) Among them are No. 26 of 1903 and No. 93 of 1903 summarised above, pp. 259, 265, respectively. See also *infra*, p. 278.

the contributor begins under the age of thirty to 10 per cent. when the contributor begins over the age of fifty. The contribution ceases for a male contributor when he has contributed for forty years, and for a female contributor when she has contributed for thirty-five years. Every male contributor may retire at the age of sixty, and must retire at the age of sixty-five. Every female contributor may retire at the age of fifty, and must retire at the age of sixty. The allowance received on retirement is an annual payment of one-sixtieth of the total amount received by the contributor in salary while he has been a contributor, with an addition in the case of those who were in the service before the fund was established. On the death of a contributor not leaving a widow, an amount equal to the sum of his contributions (without interest) less the sum of any payments of retiring allowance made to him is payable to his personal representative. If he leaves a widow, she is to receive till death or re-marriage a yearly allowance of not less than the annuity which the last-mentioned amount would produce, plus £18, and upon her death or re-marriage the excess (if any) of the said amount over the sum of the said annuity already paid to her becomes payable to her personal representative or herself. In addition 5s. a week is payable for each child of a deceased contributor until such child attains the age of fourteen. A contributor retiring from the service because of medical unfitness is to get back the amount of his contributions without interest, and, if his service has exceeded fifteen years a further sum, to be determined by the Board which administers the fund.

**Mining Act Amendment (No. 55).**—The Act (*inter alia*) authorises the Government to advance money for the carrying on of pioneer mining. It also establishes a system of licensing gold-dealers, and forbids the sale of gold except where either the buyer or the seller is a licence-holder.

**Industrial Conciliation and Arbitration Amendment (No. 56).** (*n*)—Among the provisions of this Act is one which makes the causing of or taking part in a strike or lock-out of any movement intended to produce a strike or lock-out an offence punishable with a fine not exceeding, in the case of a union or association or of an individual employer, £100, and, in the case of an individual worker, £10.

**Workers' Dwellings Act Amendment (No. 57).**—This Act brings unneeded portions of the lands reserved for defence within the scope of the principal Act, No 42, above. (*o*)

**Agricultural Implement Manufacture, Importation, and Sale (No. 58).** (*p*)—This Act is intended to deal with dumping in the trade concerned. The Commissioner of Trade and Customs is empowered, upon

(*n*) See *supra*, p. 271.

(*o*) See *supra*, p. 271.

(*p*) Continued by No. 21 of 1906.

the recommendation of a board (on which the farming interest is represented), to grant such a bounty, not exceeding 33 per cent., as he may think necessary to enable home manufacturers of agricultural implements to meet "competition on unfair lines," carried on by importers. He is also empowered to refund to manufacturers duty paid on materials used by them, the term "materials" including such parts of instruments as cannot advantageously be manufactured in New Zealand. For the purpose of the Act a list is to be compiled showing the current prices of implements at the passing of the Act, and should the New Zealand manufacturers at any time agree to lower their prices as much as 20 per cent. below the listed prices, the Commissioner (upon the recommendation of the Board) may grant a bounty as in the case of unfair competition. Implements of British manufacture are treated by the Act as if they were manufactured in New Zealand.

**Factories Act Amendment (No. 60). (g)**—This Act establishes a minimum wage for persons employed in factories. In the case of a person of twenty years or more of age who has been employed four years in the trade the minimum (after one year at 17s.) is 20s. a week.

**Civil Service Classification (No. 61).**—The Minister in charge of each department is required by this Act to submit to Parliament for its approval a scheme classifying the civil servants under him, and fixing their rates of pay and increments of pay. The increments of pay prescribed for each civil servant by the scheme (if approved) will only take effect upon a certificate of his good conduct given by the permanent head of his department, but when this certificate is withheld there is to be an appeal to a board constituted by the Act and representative of the service.

**Shipping and Seamen Act Amendment (No. 63). (r)**—This Act (*inter alia*) penalises the fraudulent employment of a duly certified officer for the purpose only of enabling the ship to clear, and not for the purpose of the whole voyage.

**Marriage Validation (No. 64).**—By this Act marriages with a deceased wife's niece or a deceased husband's nephew, contracted *prior to the Act*, are to be deemed to have been valid.

**1906 (s)** Acts passed—Public, 65 ; Local and Personal, 39 ;  
Private, deemed to be Public, 3.

**Opium Prohibition Act Amendment (No. 3).**—Persons permitted to sell opium having already been required to keep a record of every sale

(g) See *supra*, pp. 248, 256.

(r) See *supra*, p. 265.

(s) Contributed by Godfrey R. Benson, Esq.



by the principal Act of 1901, (†) this Act requires purchasers from them to keep a similar record of every purchase.

**Registration of Births Extension (No. 4).**—This is an Act such as has twice before been passed, giving a time within which births, for the registration of which the due time has already expired, may be registered.

**Payment of Jurors (No. 5).**—This Act cuts down the remuneration of common jurors from 10s. a day to 8s. a day, when they attend more than four hours, and 4s. a day in other cases.

**Fire Brigades (No. 7).**—This Act provides for the establishment, in each of the principal towns and of such other districts as may at any time be decided by the Governor in Council, of a Fire Board, with members elected by the insurance companies and the local authority respectively and a member to be appointed by the Governor, which Board will be charged with the maintenance and control of a fire brigade. The estimates of the Board, after approval by the Minister charged with the administration of the Act, are to be met by a rate on Government property, a contribution from the insurance companies, and a contribution from the local authorities. The Board will have power to make bylaws in regard (*inter alia*) to the storage of inflammable substances, including hay and straw; and the superintendent appointed by the Board will have free access to all buildings to see that the requirements of such bylaws are fulfilled. No building may be used for any sort of public gathering unless it is provided to the satisfaction of the superintendent with means of escape in case of fire. Damage done to property by the superintendent in putting down a fire is to count for purposes of insurance as damage done by fire.

**Habitual Criminals and Offenders (No. 8).**—This most important Act provides means whereby an habitual criminal may, upon conviction for an offence, be duly dealt with as an habitual criminal and not merely punished for that particular offence. A person who has been twice convicted of any offence of a class comprising certain sexual offences and abortion, or who has been four times convicted of any offence of a class comprising wounding, housebreaking, theft, false pretences and other offences against property, may, if again convicted upon indictment of an offence coming within either of these classes, be declared by the judge to be an habitual criminal. Further, any such person, or any person who has been convicted six times of any of certain offences of a less serious character, may, if again convicted by a magistrate of any of the last-named offences, be sent by him before a judge for treatment as an habitual offender. A person thus declared to be an habitual criminal will be liable to detention in a

(†) See *supra*, p. 243.

special reformatory prison during the Governor's pleasure. He will have, however, the right of applying at any time to the Supreme Court or a judge thereof for a recommendation that "having sufficiently reformed, or for other good and sufficient reason," he may be discharged. The Court or judge will then "make inquiry in such manner as may be deemed fitting." If thereupon the Court or judge recommends his discharge, the Governor may discharge him, but may at the same time order him (under penalty) to report himself periodically during two years (or less), if still in New Zealand, to some Probation Officer under the First Offenders' Probation Act, 1886. If during such period he is convicted either of failure duly to report himself, or of any offence punishable with more than three months' imprisonment, the Court (including a Court of summary jurisdiction) before which he is convicted may recommit him to the reformatory prison for detention during the Governor's pleasure. Persons detained in reformatory prisons are to be employed in labour, and credited with wages which will either be applied to the maintenance of their wives and children (if any), the balance (if any) being paid over to the prisoners themselves upon their discharge.

**Training-ships (No. 10).**—This Act, which is a good example of the extent to which New Zealand legislation leaves the Executive Government to settle details for itself, empowers the Governor in Council (in the matter of appointments, the Governor alone) to do all that may be necessary for the establishment and maintenance of training-ships, the expenses to be paid out of moneys appropriated from time to time by Parliament.

**Sale of Explosives (No. 11).**—This Act provides for the licensing of dealers in and carriers of explosives, and the prohibition of sale or carriage of them by unlicensed persons. It requires every sale of explosives to be entered in a book, and all explosives to be delivered in marked packages. It prohibits the sale of these to persons under fifteen years of age. It also prohibits such sale to persons unknown to the vendor except in the presence of a witness who is known to the vendor and knows the purchaser, and who with the buyer must sign the required entry in the vendor's book.

**Workers' Dwellings Act Amendment (No. 15).**—This Act amends the definition of "workers" in the principal Act of 1905 (*u*) by raising the limit of income from £156 to £200. It also permits the poorer applicant to be preferred when two or more workers apply for the same dwelling.

**Savings-bank Profit (No. 16).**—This Act authorises the remuneration out of profits of trustees of savings-banks, and extends to the whole

(*u*) See *supra*, p. 271.

country a power, previously confined to the Provincial District of Otago, to pay over profits of a savings bank to other charitable institutions, such as hospitals.

**South Island Landless Natives (No. 17).**—This Act provides for the setting apart of Crown lands in the South Island as reserves for landless natives, and the settlement of such natives, upon them with close restrictions upon their power of alienating the lands allotted to them. When in this process of settlement an unmistakably large area of land has, through mistake, been allotted at first to any native family, part of it may be taken back by the Native Land Court and held by the Crown "as an endowment for the recreation and education of natives."

**Private Hospitals (No. 18).**—This Act requires private hospitals to be licensed. Before such licence is given the Inspector-General of Hospitals must be satisfied as to the fitness of the buildings, etc., and the Minister administering the Act must be satisfied as to the fitness of the licence-holder. The Minister may cause any licensed hospital to be inspected and may revoke the licence at his discretion.

**Government Advances to Settlers (No. 19).**—This is in the main a consolidating Act. (x)

**Firearms (No. 20).**—This Act prohibits sale to or possession by persons under sixteen of firearms or ammunition.

**Public Revenues (No. 2) (No. 22).**—This is an Act to facilitate the carrying on of the public service in the event of delay in any year in the granting of supply.

**New Zealand Loans Act Amendment (No. 24).**—This Act institutes (not on a liberal scale) sinking funds for the redemption of the loans hitherto raised for war and defence purposes, and also for the loans raised for purposes of the Lands Settlement Acts. The Colonial Treasurer is without further appropriation to pay into each of these sinking funds 1 per cent. per annum of the amount of the loans concerned. The former of these funds is to be accumulated at compound interest by the Public Trustee till 1945. In the case of the latter fund the public Trustee is directed, till the Colonial Treasurer demands the money for redemption or further investment for lands settlement, to invest it "on securities yielding the highest rate of interest."

**New Zealand International Exhibition (No. 25).**—This interesting Act (*inter alia*) enables the Governor in Council to suspend or modify for the benefit of the New Zealand International Exhibition the provisions of the Industrial Conciliation and Arbitration, Factories, and Shops and Offices Acts, and also, in the case of visitors to the

(x) Included in the six Acts which are consolidated is No. 16 of 1899 (*supra*, p. 223).



exhibition and exhibitors, those of the Chinese Immigrants and Immigration Restriction Acts, and to remit or reduce customs duties. On the other hand it applies to the Exhibition the laws relating to the fencing of machinery and to defective machinery.

**Customs Duties Adjustment (No. 26).**—On June 8, 1906, the Governments of New Zealand and Australia entered into a provisional agreement for “reciprocal and preferential concessions in certain customs duties”; and on August 30th of the same year a resolution of the House of Representatives authorised the collection of duties in accordance with this agreement pending its consideration by Parliament; but on October 3rd of the same year the House of Representatives decided not to ratify the agreement. This Act was accordingly passed in order that the duties levied in pursuance of the resolution of August 30th should be deemed to have been in force from that date till October 4th, and the previously lawful duties be deemed to have revived on the latter date. It provides further for the refunding of the excess paid in cases where the effect of the resolution of August 30th was to raise the duty.

**Juvenile Offenders (No. 28).**—This Act requires the police and magistrates to make arrangements for the hearing of cases against offenders under sixteen years of age at special sittings and not at the ordinary court-house, for the exclusion of the general public from the court during such sittings, and for avoiding, whenever possible, the detention of such offenders in a gaol or lock-up pending trial.

**Public Works Act Amendment (No. 30).**—It may be consoling to some writers to find, from one of the amendments in this Act, that the authors of the compiled Public Works Act of 1905 (*y*) succeeded in one section in saying the exact converse of what they meant. The most important provision of this Act empowers the Government to undertake works for utilising water power to generate electrical energy, and for the transmission, use, supply, and sale of electrical energy.

**Post Office Act Amendment (No. 31).**(*z*)—One of the provisions of this Act extends to libellous matter and to advertisements of lotteries or “schemes of chance,” the drastic powers which the Postmaster-General already possessed for the interception and destruction of indecent or immoral printed or written matter.

**Motor Regulation (No. 32).**—This is mainly a consolidating Act repealing the Acts of 1902 and 1905. (*a*) There is not in New Zealand a general speed-limit for motors, though of course a special speed-limit can be imposed for a particular place by bylaw. The registration of motors is a measure which can be adopted by local authorities at their discretion. No licence is required for drivers.

(*y*) See *supra*, p. 272.

(*z*) See *supra*, p. 233.

(*a*) See *supra*, pp. 251, 269.

**Offensive Publications (No. 35).**—This Act amends an Act of 1892 by empowering a justice upon the sworn complaint of any person to issue a search warrant for obscene pictures or printed or written matter kept for any purpose of gain. Such matter when found may, upon the order of two justices, be destroyed.

**Police Offences Amendment (No. 36).**—This Act strengthens the law against Sunday trading by repealing the words “to public view” in a previous enactment prohibiting the keeping of stores, bars, etc., “open to public view” on Sunday.

**Adoption of Children Act Amendment (No. 37).**—This Act forbids any person adopting a child under the principal Act (of 1895) to receive a premium, except with the consent of a stipendiary magistrate.

**Government Advances to Workers (No. 39).**—This Act empowers the Government to lend money to “workers” (*i.e.* persons “employed in manual or clerical work” with an income not exceeding £200) for the purpose of erecting dwelling-houses for themselves on urban or suburban land. Not more than £350 may be lent to any one borrower. The money is to be repaid by instalments in thirty-six and a half years. The interest is to be 5 per cent., or 4½ per cent. if paid within fourteen days of the due date. The Government may borrow £200,000 for the purpose of such advances.

**Industrial Conciliation and Arbitration Act Amendment (No. 40).**—Under this Act, modifying the principal Act of 1905, (b) the President (henceforth called the Judge) of the Arbitration Court need not be a judge of the Supreme Court, but must be a person eligible to be a judge of the Supreme Court, and may from time to time be made a temporary judge of the Court when it requires assistance.

**Defence Act Amendment (No. 41).**—The chief provisions of this Act are for the appointment of a Council of Defence and an Inspector-General of the Defence Forces. Also it allows Volunteers (not on actual military service) to quit the forces after one year.

**Sea Fisheries (No. 42).**—This Act (*inter alia*) extends the provisions of the principal Act (of 1894) to fresh waters.

**Stamp Act Amendment (No. 43).**—This Act (*inter alia*) authorises the appointment of a special Minister for the administration of the Stamp Act, 1882. It also provides that assessment of real property for death duties shall take place under the Government Valuation of Land Act Amendment Act, 1903.

**Habitual Drunkards (No. 45).**—Under this Act a person who is convicted of drunkenness for a fourth time within nine months may be committed by the convicting magistrate for a period not less than a year to an institution for the reclamation of drunkards. Provision

(b) See *supra*, p. 271.

is made for the inspection and authorisation by Government of such institutions.

**Scenery Preservation Amendment (No. 46).**—An Act of 1903 (c) authorised the reservation of Crown lands “possessing scenic or historic interest or on which there are thermal springs,” and the addition to them of land, in private ownership, to be acquired for the purpose by the Crown. The Governor was by that Act authorised from time to time to appoint commissioners to advise as to what lands should be dealt with under the Act. The chief object of the present Act is to set up a permanent Board for that purpose.

**Mining Act Amendment (No. 47).**—This Act (*inter alia*) requires the payment of one and a half times the ordinary wages in all cases of work in mines on Sundays and holidays.

**Scaffolding Inspection (No. 48).**—The Governor may under this Act appoint inspectors for defined districts, and after such appointment any person within such a district must notify the inspector before he erects any scaffolding more than 16 feet high or any swinging stage. If the inspector thinks any such scaffolding or stage or any gear connected therewith unsafe, he may give such directions, to remedy the defect, as he thinks fit, and, subject to an appeal to the Minister of Labour, his directions must be obeyed. Further, the Governor is empowered to make, by Order in Council, regulations relating to scaffolding and gear used in connection therewith.

**Apiaries (No. 50). (d)**—This Act, which applies to two or three named diseases of bees and to others which may be declared by the Governor in Council, provides for the appointment of inspectors, requires the owner of any hive to notify any of the diseases in question, gives the inspector large powers to treat or extirpate the disease, and prohibits sale of bees or honey from an infected hive or apiary. No compensation is allowed for any destruction done under this Act.

**Maori Land Claims Adjustment and Laws Amendment (No. 51).**—This is one of the Acts passed almost every year in regard to Maori land, making detailed amendments in the machinery of administration and determining a number of particular cases of difficulty as to succession to land and the like.

**Town Districts (No. 53).**—It would appear from this Act that the very brief Town Districts Act of 1905 (reviving a power of creating special highway authorities in special districts, other than boroughs, within the area of a county) was too briefly drawn to effect its purpose at all; in particular, that Act appears to have left untouched provisions of earlier Acts which were wholly incompatible with its working.

(c) See *supra*, p. 261.

(d) See *infra*, p. 233.



**Legislative Officers' Salaries Act Amendment** (No. 54).—The salaries of the Speaker and Chairman of Committees of the House of Representatives are by this Act increased to £800 and £500 respectively.

**Tourist and Health Resorts Control** (No. 55).—This Act creates a "Department of Tourists and Health Resorts," to which is given the management of certain reserves specified in a schedule, and of others which may from time to time be set apart by Order in Council. Special provision is made for the granting, by the Minister administering the Act, of portions of these reserves for the purposes of games, for the erection on them of pavilions and stands, for limiting the amount of gate money which may be charged for admission to such grounds, and generally for the regulation of the games to be played on them.

**Municipal Corporations Amendment** (No. 56). (*e*).—The most interesting provision of this Act is one requiring that every new dwelling-house in a borough shall have at the side or in the rear an open space, clear of any sort of erection, exclusively belonging to it. The minimum size of such a space must be 300 superficial feet; it must extend along the whole depth or width of the house (as the case may be); the distance across it (as to which the requirements vary with the height of the house) must be, in the case of a house exceeding 35 feet in height, not less than 30 feet from the house or any outbuilding of the house. There are also provisions empowering councils to make bylaws for lodging-houses, prescribing, in accordance with the number of persons accommodated, the number and size of rooms.

**Factories Act Amendment** (No. 75). (*f*).—This Act empowers the Governor in Council to prescribe rules for factories "where any noxious or dangerous gas or material exists, or is generated or used." It rests with the Governor to declare what is noxious or dangerous.

**Statute Law Amendment** (No. 58).—This is an Act giving effect to an interim Report of the Commissioners appointed under the Reprint of Statutes Act, 1895. Most of its provisions are to rectify omissions in the drafting of Statutes; one of these, however, has the effect of making it possible for a judge to authorise the marriage of a minor when the parents refuse their consent, if he thinks such refusal unreasonable or wrong.

**Testator's Family Maintenance** (No. 59).—This Act consolidates and amends two short Acts, of 1900 (*g*) and 1903 (*h*) respectively. The former of these Acts enabled the Court to make provision out of a testator's estate for his or her husband, wife or children, when the testator had not adequately done so; the latter added a brief necessary provision as

(*e*) See *supra*, p. 233.

(*g*) See *supra*, p. 233.

(*f*) See *supra*, p. 243.

(*h*) See *supra*, pp. 253, 259.

to death duties. The amendments comprised in the present Act in the main make explicit the very ample discretion which seems to have been given to the Court by the brief language of the original Act, as to the manner in which the provision might be made and the regard to be had to the interests of one or another of the legatees under the will. In addition, however, the term within which application for such provision may be made is extended from six months to twelve from the death, or in the case of an executor applying for an infant to two years from the probate, and may be further extended by the Court upon due cause shown. The Court may subsequently vary or discharge an order when the person for whose benefit it was made has come into other property; charges upon the provision made by the Court are made invalid without the consent of the Court; and a right of appeal to the Court of Appeal is given or made explicit.

**Public Health Act Amendment (No. 61).**—This Act empowers district boards or hospital boards to combine with one another for sanatoria for consumptives.

**Maori Land Settlement Act Amendment (No. 62).**—This Act (*inter alia*) makes provision for dealing with Maori land infected with weeds. It also enables a native to alienate without consent of the Native Land Court land which he has acquired in any manner from any European, or which he has bought for money, or which he leases from the Crown.

**New Zealand and South African Customs Duties Reciprocity (No. 63).**—This Act, passed in view of negotiations for a "reciprocal customs treaty with South Africa," empowered the Governor, if such a treaty were concluded, to bring its provisions into force before the next meeting of Parliament, by an Order in Council which was to continue in effect for twenty-one days after the opening of the session.

**Immigration Restriction Act Amendment (No. 65).** (*i*)—This Act, which was reserved for the signification of His Majesty's pleasure thereon, prohibits the landing in New Zealand of any person who within two years before had been in prison for any offence punishable in New Zealand by imprisonment for two years or upwards or by death, unless the offence has been "a mere political offence" or he has been pardoned.

**1907** (*k*) Acts passed—114; Public, 79; Local, 31; Private, 4.

**New Zealand and South African Custom Treaty Ratification (No. 1).**—This Act gives permanent effect to the tariff preference which, under an Act of the previous year, the Governor had been authorised to bring

(*i*) See *supra*, p. 229.

(*k*) Contributed by Godfrey R. Benson, Esq.

into force temporarily upon the conclusion of the treaty with South Africa.

**Reserve Fund Securities (No. 5).**—This Act provides for the paying-off of certain debentures, guaranteed by the Imperial Parliament, which were held by the New Zealand Government for the purpose of hypothecation from time to time, but which have now matured, and for the purchase of such other securities as the Colonial Treasurer may think fit, to serve the like purpose.

**Trustees' Amendment (No. 6).**—This is an Act enabling the Court to rectify the omission in a will or trust deed of sufficient provision for maintenance of beneficiaries during minority. The Act of 1891, which is amended by the Act, reads as if it had been intended to deal with this matter as well as with the matter of advancement in life, but in the most important place the words "maintenance or" were somehow left out.

**Apiaries (No. 11).**—An Act for the suppression of diseases of bees was passed in 1906, (*l*) and the present adds to it a provision making the use of frame-hives compulsory after a certain time. But in doing this Parliament has repealed the Act of the previous year, and re-enacted it, with very trifling alterations, besides this new provision.

**Police Offences Act Amendment (No. 12).**—This Act again, passed to amend in slight points a recent Act (of 1904(*m*)), repeals it and re-enacts it as amended. The subject dealt with is the regulation of boxing contests.

**Tohunga Suppression (No. 13).** — "Whereas designing persons commonly known as tohungas practise on the superstition or credulity of the Maori people by pretending to possess supernatural powers in the treatment and cure of disease, the foretelling of future events, and otherwise, and thereby induce the Maoris to neglect their proper occupations and gather into meetings where their substance is consumed and their minds are unsettled, to the injury of themselves and to the evil example of the Maori people generally," and whereas (it may be added) the proceedings so described were formerly tolerated, but made subject to regulations to be made by the local "Maori Council," this Act makes it an offence to practise as a tohunga. The consent of the Native Minister is required to any prosecution. The Governor-in-Council may make any regulations he thinks fit "to enable the intentions of this Act to be carried out"—a very vaguely worded provision.

**Foreign Tribunal Evidence (No. 14).**—Upon the certificate of the Consul or Vice-consul of a foreign State that he believes the evidence of a person in New Zealand to be required for the purpose of any

(*l*) See *supra*, p. 280.

(*m*) See *supra*, p. 263.



proceedings pending in a tribunal of his State, a solicitor of the Supreme Court may take that person's affidavit or declaration. A false affidavit or declaration is punishable as perjury whether the foreign proceeding, in view of which it was made, was actually pending or not.

**Customs.**—No. 15 is an important Tariff Act, amending and re-enacting the provisions of the law on the subject. Special duties are imposed on a number of goods if they are not the produce or manufacture of some part of the British dominions. Unless a certificate is produced they will be regarded as being of foreign manufacture. The onus of proof lies on the importer. Certain articles may be analysed for the purpose of ascertaining the duty and the fee for analysis be paid by the importer. Re-imported goods pay double duty. The definition of an importer is extended and now reads—

Where goods are sent to New Zealand for direct or ultimate delivery to any specified person in New Zealand, such person shall be deemed to be an importer of the goods, notwithstanding that he may not be possessed of or beneficially interested in the control of the Officers of Customs. . . .

Where in respect of any goods there are more importers than one, the Collector shall have the same power with regard to all of them as he has with regard to the importer by or on whose behalf entry is offered or passed.

The Act does not in any way affect the preferential arrangement made with some of the South African Colonies.

**Methylated Spirit (No. 17).**—This is an Act for suppressing the practice of defrauding the Revenue by purifying methylated spirit, or the like, so as to render it more or less fit for drinking.

**Land and Income Assessment (No. 18).**—This Act revises the rate of the "graduated land-tax" which is paid on the unimproved capital value of land under the consolidating Act (with the same title) of 1900. (n) Under the new scale, which is graduated in a rather complex way, the tax on the smallest properties affected, viz. those from £5000 to £7000 in unimproved capital value, is half what it formerly was, being now one-sixteenth of a penny in the pound of capital value; on properties of £15,000 the tax is unchanged; on larger properties it is made higher, and on properties of £200,000 (when the graduation ceases) the tax is much more than double what it was before, namely, 2 per cent.

**Sale of Food and Drugs (No. 22).**—The salient features of this Act, which replaces all previous enactments on the same subject, are that

(n) See *supra*, p. 237.

the duty of enforcing it is given to the central Government to the exclusion of local authorities, and that enormously wide powers of making regulations to secure the purity and wholesomeness of food and drugs are conferred on the Governor-in-Council.

**Supreme Court Practice and Procedure Acts Amendment (No. 23).**—This is an Act to validate certain orders, made by Registrars of the Supreme Court acting in the place of judges, which may not have been covered by the true interpretation of the Acts under which the orders purported to be made.

**Marine Insurance (No. 24).**—This is a codifying Act following the lines of the English Act, 1906. (o)

**Post Office Savings Bank Funds Investment (No. 25).**—This Act authorises the investment of a certain sum held by the Post Office in Government debentures issued for the purpose of public works.

**Scaffolding Inspection Act Amendment (No. 27).**—This Act brings scaffolding less than sixteen feet high within the provisions for inspection, prescribes that ladders used in building shall extend five feet beyond the level which they are intended to reach, prescribes automatic catches for lifts used in buildings, requires joists to be covered wherever there would otherwise be risk of accident, and requires reports of all accidents in building.

**Police Offences (No. 29).**—The offences against which this Act is directed are: false claims by tradesmen, etc., to have some appointment from the Governor or to have the patronage of the Governor or his family; the use of documents designed to have the false appearance of having a legal effect in legal proceedings; the use of words or letters calculated to import a false claim to some degree, diploma, or the like (provided that a medical practitioner may call himself "doctor" without having a doctor's degree).

**Agricultural Implement Manufacture, Importation, and Sale (No. 30).**—This Act amends an Act of the previous year which enabled the Executive Government to place an import duty on agricultural implements which were "dumped" in New Zealand from foreign countries. The effect of the amendment is to place other parts of the British dominions, but not the United Kingdom, among the countries where dumping is to be prevented.

**Agricultural Labourers' Accommodation (No. 31).**—This Act empowers the Governor-in-Council to make regulations as to accommodation provided by their direct employers for agricultural labourers other than shearers. It is required by the Act itself that no sleeping apartment so provided shall have less than 240 cubic feet of air-space for each person, and that there must be separate rooms for eating and

sleeping. Inspectors are to be appointed by the Governor to enforce the Act. Separate sleeping accommodation must be provided for Asiatics.

**Flour and other Products Monopoly Prevention** (No. 34).—For the prevention of monopolies of flour, wheat, or potatoes, this Act constitutes a Court, consisting of the (Industrial) Arbitration Court with an additional member appointed upon the recommendation of the legally recognised Agricultural and Pastoral Societies, on the recommendation of which Court the Governor-in-Council may from time to time suspend the tariff duties on those articles. The Court may make such recommendation when it finds, upon application made to it by the Governor, that the price of the article is being raised by any combination among the holders of stocks or by any complete or partial monopoly established by any one holder, or (in the case of flour) that the difference of price between wheat and flour is greater in New Zealand than in Australia without any corresponding difference in the cost of milling.

**Coal Mines Act Amendment** (No. 2) (No. 35). (*o*<sup>1</sup>)—This Act consists of detailed provisions as to leases and licences for coal-mining or for prospecting, as to precautions in the use of explosives, as to Government inspection, closing of dangerous mines, etc.

**Sea Fisheries** (No. 37).—"Whereas the present system of picking oysters will, if permitted to continue, result in the destruction of the oyster-beds of the North Island," this Act (*inter alia*) empowers the Governor-in-Council to set apart any oyster fishery in the North Island as a reserve where only the Minister, or persons authorised by him, may pick oysters.

**Butter Export** (No. 37).—This Act prohibits the export of butter containing more than sixteen per cent. of water.

**Defence Act Amendment** (No. 38).—This Act (*inter alia*) imposes a fine of £5 in the case of an officer and £1 in other cases on any Volunteer absent without reasonable excuse from the annual inspection parade.

**Infant Life Protection** (No. 42).—By this Act every person who takes in for more than a week, for payment, a child under six and maintains it apart from its parents or guardians, must hold a yearly licence, granted at its discretion by the Education Department, and is made subject to Government inspection. The Act further authorises adoption of a child without its parents' consent in cases where a judge or magistrate is satisfied of the unfitness of the parents.

**Post Office Act Amendment** (No. 44). (*o*<sup>2</sup>)—This Act allows the use, by persons authorised by the Postmaster-General, of recording machines, by which they can stamp postal packets, telegrams, receipts, etc.,

(*o*<sup>1</sup>) See *supra*, p. 269.

(*o*<sup>2</sup>) See *supra*, p. 233.



instead of affixing adhesive stamps, and which will record, for subsequent collection by the Post Office, the amounts so stamped.

**Education Act Amendment (No. 47) (*o*<sup>3</sup>).**—The principal provisions of this Act concern National Scholarships in the University of New Zealand, and the special instruction of children with defective sight and hearing and other mental defects.

**Beer Duty Act Amendment (No. 49).**—This Act exempts from duty "hop-beer" which contains not more than 3 per cent. of proof-spirit. A manufacturer of hop-beer must, however, obtain a licence.

**Parliamentary and Executive Titles (No. 50).**—This Act changes the title of Colonial Treasurer to that of Minister of Finance, that of Colonial Secretary to Minister of Internal Affairs, and that of Member of the House of Representatives to Members of Parliament.

**Land Laws Amendment (No. 51). (*o*<sup>4</sup>).**—This Act relates to Crown land and land for settlements. It forbids, in each case, any future granting of leases in perpetuity, and requires that land shall be let on leases for no longer than sixty-six years, but that the lessee shall at the end of any such period have the right of renewal for a further like period at a rent to be determined in a prescribed manner, which guards against his being rented upon his improvements. In the case of existing leases in perpetuity the lessee is given power to purchase the fee-simple.

**Public Trust Office Amendment (No. 53).**—This Act empowers the Public Trustee, with the sanction of the Court, to take possession of and administer property when it is left uncared for by its owner, or when the owner is unknown, or when it is unknown whether he is dead or alive, and in other like cases. The Public Trustee may apply the property for the maintenance of the owner's relations, but, subject to this, holds it in trust for the owner.

**Public Service Classification (No. 55).**—This Act appoints a board to classify the various positions in the Civil Service in eight classes, and lays down a scale of pay for them. Existing civil servants are not to suffer any diminution of pay through the operation of the Act.

**Public Health Act Amendment (No. 57). (*o*<sup>5</sup>).**—This Act provides for the establishment of sanatoriums for consumptives. It provides that where an infectious disease hospital is required the health authorities may contract with the trustees of a hospital to provide for the need. It further authorises either the local authorities or the Government to hold at any time a medical inspection of the children in any public school and to notify any disease or bodily defect to the parents of the child affected.

**National Endowment (No. 58).**—This Act assigns certain lands as an endowment for education and for old age pensions.

**Native Land Settlement (No. 62).**—This Act provides for the disposal

(*o*<sup>3</sup>) See *supra*, p. 267.

(*o*<sup>4</sup>) See *supra*, p. 271.

(*o*<sup>5</sup>) See *supra*, p. 234.

of Maori land which is not wanted for occupation by the Maori owner. Such land is to be sold or let on lease by the local Maori Land Board and the proceeds are to be held in trust for the owner. The Act provides also for the setting apart of lands for the occupation of Maoris who are in want of land.

**Public Service Superannuation (No. 63).**—This Act creates a contributory pension fund for members of the Civil Service. Contribution is to be obligatory on all persons engaged in future, optional for existing servants. The Government is to contribute to the fund and guarantee its actuarial sufficiency. Retiring allowances will be paid in cases of medical unfitness as well as of old age.

**Fire Brigade (No. 64).**—Under this Act the Government can require the creation of a fire brigade in any district.

**Gaming or Lotteries Act Amendment (No. 65).**—Among the many provisions of this Act is one enabling the Supreme Court to declare a house to be a common gaming-house. The house will then have a placard, so describing it, affixed, and it thereupon becomes an offence for any person (except with the excuse of ignorance) to enter the house. The owner (if the house is let) may then immediately determinate the tenancy. There are stringent regulations of betting at race-meetings, and it is made an offence to make or offer any bet on any ground on which any sports are being held.

**Animal Protection (No. 66).**—This Act consolidates with amendments the Acts passed from 1880 for the protection of game native to New Zealand, or introduced into the Dominion by the statutory acclimatisation societies. The acclimatised game include, besides our own common game-birds, antelope, moose, and hares. Besides game a number of other birds, and the opossum and tuatera lizard, are protected. Weasels are also protected for the purpose of keeping down rabbits. Besides regulations to prevent the extermination of the birds and animals in question, there are also provisions to prevent the introduction of undesirable creatures or of excessive quantities of any bird or animal in any one district.

**Government Railways Department Classification (No. 67).**—This Act raises the scale of pay fixed in 1901. Most of the changes made are slight increases of pay.

**Factories Act Amendment (No. 73).**(*o*<sup>6</sup>)—The most striking provision of this Act is one which enacts a minimum wage for all persons employed in any capacity in a factory, viz. 5s. a week in the first year of employment, rising to £1 a week in the sixth and subsequent years. There are also provisions to prevent women or boys spending their intervals for meals in the room where they or others have been working. The definition of factory is extended to electric generating stations. A

provision is made for public half-holidays (on the same day as the existing statutory half-holiday for shops), to be instituted or not in accordance with a local poll to be periodically taken.

**Shops and Offices Act Amendment (No. 74).**—This Act (*inter alia*) allows a local poll to determine on what day the statutory closing day for the shops shall be.

**Divorce and Matrimonial Causes Act Amendment (No. 78).**—This Act repeals a provision of the principal Act of 1904 (*p*) which made non-compliance with a decree for restitution of conjugal rights *ipso facto* equivalent to desertion. It also adds to the permitted grounds of divorce. These were: adultery of either party, desertion by either party, habitual drunkenness or neglect on the part of either party, and attempts by either on the life of the other, and certain other offences on the part of the husband. There are now added: murder of, or attempt on the life of, a child of either party, confinement as a lunatic for (in the aggregate) ten years without hope of recovery.

**Chinese Immigrant Amendment (No. 79).**—By this Act Chinese immigrants are required to pass a test in reading English, the severity of which depends on the Customs authorities and magistrates.

(*p*) See *supra*, p. 266.



### III. FIJI. (a)

1898

Ordinances passed—10.

**Customs.**—No. 1 (b) repeals the Customs Ordinance of 1888 and provides a new tariff of customs dues, which is of considerable length, containing many specific duties, but proceeds in the main on the basis of a  $12\frac{1}{2}$  per cent. *ad valorem* duty, and contains an *export* duty of  $2\frac{1}{2}$  per cent. on British sterling silver coin exported in quantities over £10.

Ordinance No. 2 amends the Customs Regulation Ordinance, 1891 to 1895, by providing for the payment of *ad valorem* duty on the basis of an invoice prepared in the country of export, stating the price payable by the *importers* in Fiji, and accepted as genuine and accurate by the collector of customs. It also (ss. 2, 5) prohibits importation of petroleum having a flash-point under  $78^{\circ}$  (previously  $100^{\circ}$ ), and provides by a schedule for the mode of testing of the petroleum imported.

**India Immigration.**—Nos. 6 and 7 deal with the immigration of natives of India. No. 6 provides for an annual contribution of 10s. (previously 12s.) from the general revenue to provide a fund for the return passage of each immigrant.

No. 7 permits the employer of indentured Indians, subject to the consent of the Governor, to employ the men on plantations other than those for which they are indentured. The consent is subject to such conditions as the Governor may impose, and also to the following statutory conditions:—

- (i.) The work to which the immigrant is put must be similar to that usually required of him at the place where he was indentured.
- (ii.) It must be done under the supervision of the employer or his regular overseers.
- (iii.) The immigrant must not remain away for any night from his own plantation in consequence of the work.

The rights and liabilities of the immigrant and the employer are not affected by the change in his place of work, and his wages while so employed are a preferential charge on the estate to which he was originally indentured.

(a) Contributed by W. F. Craies, Esq.

(b) See *infra*, pp. 294, 296, 299, and repealing Act No. 8 of 1907, *infra*, p. 306.

**Native Lands.**—The Native Land Ordinance of 1892 (No. 20), while recognising the native system of land tenure by family communities, permitted the leasing of native lands for not more than twenty-one years, subject to the consent of the Governor in Council and the regulations by the Ordinance provided.

Ordinance No. 8, passed to facilitate the leasing of small areas of native land, permits the grant of leases of areas not exceeding ten acres, at a rent not exceeding £5, subject to the approval by the Governor in Council, and to stamping and sealing by the native commissioner, and registration by the Registrar of Titles. (c) The requirement of the Ordinance of 1892 as to lodging a survey and plan is in such cases dispensed with, subject to regulations for securing identification of the land leased.

**Perjury.**—No. 4 affords a precedent for the summary punishment of perjury. It applies only in cases before the Supreme Court or certain magistrates' courts presided over by European stipendiary magistrates nominated by the Governor, and duly notified. The operative clause (s. 1) is as follows:—

If in any cause, suit, or action, civil or criminal, or in any proceeding connected therewith, it shall manifestly appear to the Court that any person examined as a witness in open Court upon oath, declaration, or affirmation, has committed wilful or corrupt perjury in any evidence so given, then in such case it shall be lawful for the court to cause such offender to be detained in custody, and at any time before the rising of the Court on the same day, or if such case be not concluded on that day, then on the conclusion of such case, to take cognisance of the offence, and either to commit such witness, as for a contempt of the Court, to prison for any term not exceeding six months, with or without hard labour, or to fine such witness in any sum not exceeding £20, provided that the powers hereinbefore given shall be in force and operative, notwithstanding any irregularity or want of form in the administration of the oath, declaration, or affirmation.

S. 2 requires the Court to record and send to the Chief Justice the facts constituting the offence, with any statement made by the offender and the finding and sentence. S. 3 preserves the power in grave cases to direct a prosecution under the ordinary law.

**Volunteers.**—No. 10 (d) provides for the establishment and regulation of a Volunteer force to repel invasion and quell local disturbances at the call of the Governor, and to be constituted only of persons

(c) Registration of title was established by Ordinance No. 34 of 1876: until that date the New South Wales Act on the subject had been temporarily in force.

(d) See *infra*, p. 295, and repealing Ordinance No. 3 of 1906, *infra*, p. 304.

wholly of European descent. The discipline of the force when on military service is regulated by the Army Act, on other occasions by regulations made by the Governor and *Gazette*. A considerable feature in the Ordinance is the elaborate provision made for a regimental band.

## 1899

## Ordinances passed—9.

**Gambling.**—No. 2 repeals Ordinance 9 of 1897, and makes fresh provision for the suppression of gaming carried on—

- (1) In or upon any path, street, road, or place to which the public have access, whether as of right or not; or
- (2) In or at a common gaming-place, [defined to be] any place kept or used for betting, or for the playing of games for stakes, to which the public have access with or without payment, even if it is so used on one occasion only.

“Place” is defined as including “any house, office, room, or building, and any place or spot, whether open or enclosed, and any ship, boat, or other vessel, whether afloat or not, and any vehicle.” (e)

The rest of the Ordinance is in substance a transcript of the Imperial Betting Act, 1853; (f) but the above definition seems to have been introduced so as to oust the construction put on the latter Act in *Powell v. Kempton Park Racecourse Co.* (g)

The following are excepted from the Ordinance:—

- (1) Use of a totalisator (h) in connection with race meetings or athletic sports;
- (2) Playing, whether for a stake or not, at billiards or bagatelle; playing a game in any duly licensed hotel if the gambling be not promiscuous; and playing games which are also athletic exercises.

**Lepers.**—No. 7 (i) deals with persons the subject of any form of leprosy (*lepra vera*). Under ss. 3 and 4 the Governor in Council may, by gazetted notification, prohibit lepers from carrying on certain trades and callings.

Ss. 5–10 provide for the establishment of leper asylums, and the sending to them of vagrant lepers and lepers who are in a prison or a lunatic asylum.

Ss. 11, 12 prohibit the landing from places outside the Colony of lepers who are not natives of Fiji, and enforce the arrest and detention in a leper asylum of such lepers if they land.

(e) Cf. Lottery Act, 1823 (4 Geo. IV. c. 60), s. 60.

(f) 16 & 17 Vict. c. 119.

(g) [1899] A. C. 143.

(h) This contrivance is legalised, subject to certain conditions, throughout the Australasian Colonies.

(i) See *infra*, p. 307.



Ss. 16, 17 create machinery for the visiting and regulation of the asylums.

Lepers received in asylums are in custody there until discharged by order of the Governor; and while they are there, no one may buy or receive from them any food, clothes, or other articles. To justify dealing with any one as a leper under the Act it is necessary to have the evidence of a duly qualified medical practitioner that the person dealt with is a leper (ss. 15–18).

**Matrimonial Causes.**—No. 4 applies to the Colony, *mutatis mutandis*, the Matrimonial Causes Act, 1884. (*k*)

**Marine Board.**—No. 5 repeals prior Ordinances (*l*) on this subject, and provides for the appointment and functions of a Marine Board for Fiji and Rotuma. The Board conducts examinations and grants certificates of competency for masters, mates, and engineers of foreign-going and interinsular vessels (Part III.), and has power to hold preliminary inquiries and formal investigations into wrecks and casualties, and to cancel or suspend certificates for wrongful acts or defaults. The Board of Trade may order a re-hearing of any investigation or inquiry, and an appeal lies to the High Court in England in certain cases where an application for re-hearing is not made or is refused (s. 43). The Board also grants certificates and licences for trading and passenger vessels, and has power for regulating interinsular trade, the requirements of vessels, lights and signals; and to direct survey of vessels reported as unseaworthy.

**Pearl Fisheries.**—No. 3 forbids the taking, removal, sale, or export of immature pearl-oyster shell—*i.e.* of the black-edged or golden-edged varieties of *Meleagrina Margaritifera*—in which the nacre or mother-of-pearl measures less than four inches from the butt or hinge to the opposite edge or tip of the shell. The penalty is £5 per shell (s. 1). All pearl oyster is made subject to inspection before exportation, and power is given to open packages and search ships.

The Governor in Council may by proclamation alter the size of shell which may be lawfully taken in any waters of the Colony if satisfied that the full-grown shell in these waters does not attain the statutory minimum, and he is also empowered to establish a close season for fishing for pearl shell.

**Appeals from Inferior Courts.**—The Appeals Ordinance (No. 6), (*m*) amends and consolidates the laws relating to appeals from summary convictions and orders of inferior courts.

An appeal lies from a summary conviction or summary order, where

(*k*) 47 & 48 Vict. c. 68.

(*l*) No. 3 of 1888, No. 10 of 1889, and No. 11 of 1892.

(*m*) Repealed by No. 17 of 1903, *infra*, p. 297.

the amount of the penalty or order exceeds £3, or where imprisonment is ordered without the option of the fine. Where the defendant is not represented by solicitor or counsel, the magistrate must inform him of the right to appeal, and explain to him the procedure for appealing and the security to be given (ss. 4, 5).

Notice of appeal must be given in writing to the magistrate and the respondent within forty-eight hours of conviction or order, and security must be given for due prosecution of the appeal of—

- (1) Half the penalty, if any ;
- (2) If none, a sum not exceeding £50 ;
- (3) A sum not exceeding £10 for costs.

The appellant may either deposit the amount or give satisfactory security.

The appeal is by petition to the Supreme Court, and is heard on the evidence taken before the inferior court, of which the appellant is entitled to a copy. There is power to give leave to file fresh evidence (ss. 11–19).

In all cases in which an appeal lies under the Ordinance, either party may require the magistrate to state a case to review his determination on any point of law involved in the proceedings. Security is to be given not exceeding that which would be required on an appeal, and the procedure is in substance the same as under the Imperial Summary Jurisdiction Acts. (*n*)

## 1900

### Ordinances passed—6.

**Customs.**—No. 6 (*o*) amends the Customs Duties Ordinances of 1898. (*p*) It admits free of duty naphtha and benzine to be used as fuel (s. 1), and other oils to be specified by Order in Council. Oil imported under the Ordinance is subject to the test of 78°. If it exceeds that test, it can be landed and stored only under conditions imposed by the Governor in Council (s. 2).

**Census.**—No. 4 provided for a census of the population of the Fiji Islands to be taken on March 31, 1901. Special provision is made for securing the enumeration of labourers on plantations, and of persons other than natives of Fiji not employed on plantations.

**Juries.**—No. 2 amends the law of Fiji as to juries. Persons liable to act as assessors under Ordinance 23 of 1875 (*q*) are to be included in the list of jurors (s. 2). New jury lists are to be prepared by the sheriff and revised by the Chief Justice. The list is to be alphabetical

(*n*) 20 & 21 Vict. c. 43 ; 42 & 43 Vict. c. 49, s. 33.

(*o*) Repealed by No. 8 of 1907, *infra*, p. 306.

(*p*) See *supra*, p. 290.

(*q*) Amended in 1892.

and the sheriff is to summon alphabetically. The Courts are allowed to permit the jurors to separate at any criminal trial except for treason, treason felony, or murder. (r)

**Corporal Punishment.**—No. 3 (s) limits the maximum sentence of whipping to twenty-four strokes on a single conviction, whether the strokes are inflicted at one time or different times.

**1901.** Three Ordinances were passed. One dealing with disaffection against the Government was disallowed, and the other two were financial.

## 1902

Ordinances passed—4.

**Flogging.**—No. 4 (t) authorises the punishment by flogging of persons convicted before the Supreme Court of certain crimes *contre les mœurs* or against Part I. of the Criminal Law and Procedure Ordinance, No. 13 of 1889 (which deals with offences against women and girls). The punishment may be imposed in addition to, or in substitution for, penal servitude or imprisonment. The number of strokes, not exceeding twenty-four, is to be specified in the sentence. The instrument to be used is a cane or switch in the case of prisoners under sixteen, and in other cases a cat-of-nine-tails.

**Volunteers.**—No. 2 amends the Volunteer Ordinance of 1898 (u) as to the officers of the force, and as to the occasions on which it may be called out to repel invasion or suppress civil disturbance.

## 1903

Ordinances passed—17.

**Revised Ordinances.**—Ordinance No. 13 makes provision for the preparation and publication of a new and revised edition of the Ordinances of the Colony. (u<sup>1</sup>) Very large powers as to consolidation and formal amendment are entrusted to the Commissioner selected, and the new edition, when approved by the Legislative Council, is to be the sole and only proper Ordinance Book of the Colony.

**Bills of Exchange.**—Ordinance No. 6 amends the Bills of Exchange Ordinance, 1891 (No. 3, which is in the main a transcript of the Imperial Bills of Exchange Act, 1882 (x)), by altering the definition of "reasonable time" for notice of dishonour, so as to make it correspond exactly with that in s. 49 (12) of the Imperial Act.

**Copyright.**—Ordinance No. 5 provides for the protection of copyright

(r) Cf. 60 & 61 Vict. c. 13, s. 1.

(t) See *infra*, p. 296.

(u<sup>1</sup>) See *infra*, p. 302.

(s) See No. 4 of 1905, *infra*, pp. 301-302.

(u) See *supra*, p. 291.

(x) 45 & 46 Vict. c. 61.



and the prevention of piracy. It applies to books and dramatic pieces, as defined in the Imperial Copyright Act, 1842, (*y*) and to drawings, paintings, engravings, designs, and photographs (including the negative). Registration in the United Kingdom or a British possession gives copyright in Fiji (s. 8). S. 9 applies the provisions of the Imperial Act as to registration, and s. 16 provides that the Ordinance shall be considered as incorporating the International Copyright Act, 1844. (*z*)

**Marriages.**—Three Ordinances deal with the subject of marriage.

1. Ordinance No. 3 amends the Indian Marriage Ordinance of 1892 (No. 3)—

- (1) By altering the definition of “immigrant,” which now means “any person of Indian parentage introduced or coming into this Colony whether directly or indirectly and whether wholly or in part at the expense of the Immigration Fund or otherwise,” and includes “any descendant of such a person”;
- (2) By striking out a section dealing with the marriages of Christian immigrants from India;
- (3) By making provision for entry in the Indian marriage register of particulars as to immigrants not introduced under an Immigration Ordinance.

2. Ordinance No. 4 amends the Marriage Ordinance of 1892 (No. 10) by excluding from it—

- (1) “Native Fijians *inter se*, marriage between whom is provided for by native regulation”;
- (2) Persons of Indian parentage whose marriage is otherwise provided for by the laws of the Colony;

and by prohibiting the celebration of marriage between persons of Indian parentage by a minister registered for marriages unless he has received from the Agent-General of Immigration a certificate under s. 6 of the Indian Marriage Ordinance, 1892.

3. Another Ordinance (No. 10) as to marriages under the Imperial Foreign Marriage Act, 1892, (*a*) was not sanctioned and has been repealed, and other provision made, by Ordinance No. 4 of 1904. (*b*)

**Customs.**—Ordinance No. 7 amends the Customs Duties Ordinance, 1898, (*c*) by reducing the duty on sugar from  $\frac{1}{2}d.$  to  $\frac{1}{4}d.$  per lb., and by adding considerably to the list of exempted articles.

**Punishments.**—1. *Flogging.*—Ordinance No. 2 (*d*) regulates the law as to sentences of flogging. It forbids the flogging of females, and limits the maximum in the case of males to twenty-four strokes for

(*y*) 5 & 6 Vict. c. 45.

(*z*) 7 & 8 Vict. c. 12 (Imperial).

(*a*) 55 & 56 Vict. c. 23.

(*b*) See *infra*, p. 298.

(*c*) See *supra*, p. 290.

(*d*) This Ordinance modifies that of 1902 (No. 4), *supra*, p. 295.

adults and twelve strokes for juveniles. This maximum applies not only to convictions on trial, but also to breaches of prison regulations: and when the same person is convicted at one trial of two or more offences punishable by flogging, the combined sentences of flogging may not together exceed the maximum above stated. The instrument to be used must be one approved by the Governor.

2. *Hard Labour*.—Ordinance No. 9 directs that wherever a Court may sentence to imprisonment it may at its discretion order the imprisonment to be with or without hard labour.

**Wireless Telegraphy**.—Ordinance No. 11 makes the use of wireless telegraphy in the Colony subject to licence from the Governor. (e)

**Native Regulations, etc.**—Ordinance No. 12 provides for the summary punishment of persons aiding and abetting natives in breach of "native regulations" made under ss. 8 and 9 of an Ordinance of 1876 (No. 35), or by the Governor in Council under ss. 9 and 10 of the Native Taxes Ordinance of 1890 (No. 7), and repeals certain penalties and certain powers of the Governor in Council as to making regulations under the Native Dealings Ordinance of 1891 (No. 4).

**Harbours**.—Ordinance No. 14 appears to take away the exemption from light and shipping dues given to mail steamers by the Harbour Ordinance of 1880 (No. 2).

**Medical Practitioners**.—Ordinance No. 15 amends the Medical Practitioners, etc., Ordinance, 1881 (No. 14), by adding to the persons entitled to be registered persons holding a qualification entitling them to practise as dentists or surgeon-dentists in New South Wales, New Zealand, Western Australia, or any Colony, country, or State which the Governor in Council may from time to time order to be added to the schedule to the amending Ordinance.

**Municipal Borrowing**.—Ordinance No. 16 empowers town boards, (f) subject to the sanction of the Governor, to borrow by debentures secured on the town rates. A sinking fund must be provided. The sum raised must not exceed an amount the interest and sinking fund charge on which shall equal one-fourth the town rates, and the money must be raised for or towards or incidental to permanent improvements.

**Summary Convictions: Appeals**.—Ordinance No. 17 repeals the Appeals Ordinance, 1899, (g) and substitutes new provisions. The principal changes seem to be that the appeals are to be by motion or special case and not by petition, and that the appellate Court may not consider any evidence not contained in the documents filed for the purposes of the appeal.

(e) Cf. the Imperial Act of 1904 (4 Edw. VII. c. 24), *supra*, vol. i. pp. 122-123.

(f) Incorporated under the Towns Ordinance Act, 1893 (No. 16).

(g) See *supra*, p. 293.

## 1904

## Ordinances passed—12.

**Native Affairs and Dealings.**—No. 3 (*h*) repeals the Native Dealings Ordinances of 1891 (No. 4) and 1895 (No. 18), and regulates all contracts between aboriginal natives of Fiji and non-natives, except those made under the Fijian Labour Ordinance, 1895 (No. 11), and the Native Lands Ordinance, 1892 (No. 21).

All executory contracts falling within the Ordinance, if the consideration moving from either party exceeds £20, will be void against the native party unless registered by the non-native party with the magistrate of the district in which the contract is made (ss. 4, 5, 6). The magistrate may not register the memorandum lodged with him if—

- (1) It fails to state the terms of the contract with sufficient clearness;
- (2) He has any reason to suppose that the performance of the contract by the native party will involve exercise by him of any undue authority over any other native, or will induce or probably involve breach of a regulation of the Native Regulation Board; or
- (3) He considers the contract against equity or sound public policy.

In the case of a non-registered contract the native party may recover from the non-native party money paid, goods delivered, or services rendered by the native party under the contract (s. 5).

Provision is made exempting from execution under judgment against a native party communal property and the food-crop of such native (s. 7); but a committal order may be made against a judgment debtor on proof of possession of means since the date of the order to pay; and the debt will not be extinguished by imprisonment on such committal (s. 7 [2, 3]).

No. 9 (*i*) amends the Native Lands Ordinance, 1892 (No. 21), by empowering the Native Commissioner to take legal proceedings on behalf and at the expense of native owners to enforce conditions in leases by natives. See s. 28 of 1892 Ordinance.

No. 10 amends the Native Affairs Regulation Ordinance, 1876 (No. 35), by defining the powers of native stipendiary magistrates as to dealing with indictable offences (s. 2), and by placing within their jurisdiction, subject to qualifications, offences against the regulations made by the Native Regulation Board (s. 2).

**Marriage.**—No. 4 repeals the Ordinance No. 10 of 1903, (*k*) and prescribes the procedure to be followed when it is intended to solemnise in a foreign country under the Imperial Foreign Marriage Act, 1892, (*l*)

(*h*) See *infra*, p. 308.

(*k*) See *supra*, p. 296.

(*i*) Repealed by No. 11 of 1905, *infra*, p. 300.

(*l*) 55 & 56 Vict. c. 23.



a marriage between persons one of whom has had his usual abode in Fiji.

**Death and Fire Inquiries.**—No. 7 amends the Death and Fire Inquiry Ordinance of 1883 (No. 19) by allowing—

- (1) The inquiring magistrate to assess the damage to realty or personalty suffered by its owner in consequence of the fire;
- (2) The Governor in Council, if the fire was caused by a native, to order and enforce the payment by the natives of the district in which it occurred of the damage so assessed, or of so much thereof as seems just.

**Supreme Court.**—No. 8 amends the Supreme Court Ordinance, 1875 (No. 14), by providing that when the Chief Justice is administering the Government of the Colony his place as Chief Justice shall be filled by another fit and proper person (s. 2), and by giving the Chief Justice an extended power to make rules for the Supreme Court subject to disallowance by the Legislative Council.

**Witnesses.**—No. 1 provides for payment of witnesses attending criminal trials in the Supreme Court. The witness does not get his expenses unless he attends on recognisance, *subpœnâ*, or warrant, unless a special order of Court is made. The expenses of attendance, including travelling, are to be regulated by rules of Court and may be disallowed.

## 1905

### Ordinances passed—21.

**Customs.**—Ordinance No. 12 amends the Customs Duties Ordinance, 1898 (*n*), by exempting timber cut for cases for exporting fruit, articles imported as the property of and for the use of the Pacific Cable Board (*o*) if allowed by the Governor in Council.

**Wharfage Duty.**—Ordinance No. 6 amends the Wharfage Duty Ordinance, 1882, (*p*) by allowing the Governor to issue licences for private wharfs upon such conditions and on payment of such sums (not less than £5) as may be determined by the Governor in Council.

**Legislative Council.**—Ordinance No. 8 applies to 1905 the regulations made in 1904 for the registration of voters and the conduct of elections for the Legislative Council.

**Supreme Court.**—Ordinance No. 9 declares that the Supreme Court Rules, 1894, shall be deemed to have been duly and validly made and to have the full effect of law. The validation does not affect the

(*n*) No. 1 of 1893, *supra*, p. 290.

(*o*) Established under the Imperial Acts, 1 Edw. VII. c. 31 (*supra*, vol. i. pp. 90-91), 2 Edw. VII. c. 26, *supra*, vol. i. p. 99.

(*p*) No. 21 of 1882.

authority of the Chief Justice to alter, amend, or revoke the said rules under any rule-making power conferred on him.

**Native Lands.**—Two Ordinances deal with native lands. (i.) Ordinance No. 11 (*q*) consolidates and amends the law of the Colony as to “native lands”—*i.e.* “lands which are neither Crown lands nor the subject of a Crown grant.”

It does not apply to the island of Rotuma (s. 18). The native owners of such lands are known as the “mataquali,” which includes any division or sub-division of the natives who have the customary right to occupy and use such lands (s. 2). Native lands are held by native owners in accordance with native usage as evidenced by custom and tradition (s. 3), and are cultivated, allotted, and dealt with by the native owners as among themselves in accordance with custom, but subject to regulations of the Native Regulation Board approved by the Governor in Council. Disputes are settled by a court of law in accordance with the regulations, or with native custom or usage ascertained as a matter of fact by evidence (s. 3).

The alienation or leasing of native lands to persons who are not natives is permissible by consent of the Governor in Council and subject to the following restrictions:—

- (a) Presentation of a report by the council of the district in which the lands lie;
- (b) Compliance with the Ordinance as to the form of grants and demises and the conditions contained in demises, which involve registration.

The purchase-money in the case of sale and the rents on leases are applied as directed by regulations of the Native Regulation Board (s. 17). Provision is made for the exchange of native lands for Crown lands (s. 15), and for dealing with lands where the mataquali ceases to exist or is reduced so as to be unable to allocate its lands (ss. 5, 6).

Disputes as to ownership are settled by a Native Land Commissioner (s. 16).

(ii.) Ordinance No. (14) (*r*) authorises the acquisition of native lands to make roads, canals, bridges, and towing paths, and in accordance with prescribed procedure for other Crown purposes.

**Native Labour.**—Ordinance No. 18 amends the Fijian Labour Ordinance, 1895 (No. 11), (i.) by allowing the engagement under conditions of married men (s. 2); (ii.) as to the mode of paying wages (s. 7); (iii.) by allowing re-engagement (s. 9). There are other minor amendments.

(*q*) It repeats (s. 19) the following Ordinances: No. 5 of 1882; No. 21 of 1892; No. 8 of 1893; No. 2 of 1895; No. 7 of 1896; No. 7 of 1897; No. 8 of 1898 (*supra*, p. 291); and No. 9 of 1904, *supra*, p. 298; and see Amending Act No. 9 of 1907, *infra*, p. 307.

(*r*) See *infra*, p. 305.

**Indian Immigration.**—Ordinance No. 20 amends the Indian Immigration Ordinances, 1891 (No. 2) and 1895 (No. 12). It deals (*inter alia*) with fees on application or allotment of thirty or less immigrants (ss. 2, 3), with the return passages fund (s. 5).

**Indian Hemp.**—Ordinance No. 21 prohibits the importation of Indian hemp or any product or preparation therefrom, including gunjah, (s) bhang, chavas, or any article which in the opinion of the Chief Medical Officer of the Colony is capable of substitution therefor.

**Obsolete Ordinances.**—Ordinance No. 7 repeals as obsolete three earlier Ordinances—21 of 1876 (payment of Polynesian labourers), 18 of 1880 (industrial schools for natives), and 3 of 1900 (corporal punishment). (t)

**Towns.**—Ordinance No. 15 amends the Towns Ordinance (No. 16) of 1883 by allowing the limit of rate (fixed at 1s. in the pound in s. 47 of that Ordinance) to be exceeded to an extent not above 2s. in the pound by consent of the Governor in Council.

**Constabulary.**—Ordinance No. 16 (u) regulates the police forces of the Colony. (x) It provides for two classes of police :

1. Village police for police duty in native villages enrolled by the Native Regulation Board.

2. Fiji constabulary (including a body generally known as Rural Police, whose position is legalised by s. 3).

**Partnership and Limited Liability.**—Ordinance No. 17 extends s. 207 of the Ordinance of 1878 (No. 7) on this subject to all British Colonies. It had applied only to Australian Colonies.

**Mother-of-Pearl Fisheries.**—Ordinance No. 5 permits the Governor to grant licences to fish for mother-of-pearl oysters and imposes penalties for fishing without a licence.

**Protection of Animals and Birds.**—Ordinance No. 13 amends the Animals Protection Ordinance, 1895, (i) by making (s. 2) the close season for native game or wild birds from September 1st to March 31st ; (ii.) by empowering the Governor in Council to proclaim preserved areas within which no animal or bird may be taken or killed (s. 3) ; (iii.) by empowering the Governor in Council to make orders protecting from slaughter or capture the birds or animals therein named (s. 5). The mynah bird is excepted from the protection given by the Ordinance (s. 4).

**Punishment : Whipping.**—Ordinance No. 4 authorises the whipping by order of a Court of a child who in the opinion of the Court is under

(s) See the Gunjah Prohibition Ordinance, 1886 (No. 11).

(t) See *supra*, p. 295.

(u) See *infra*, p. 306.

(x) It repeals (s. 33) the Police Ordinance, 1876 (No. 30), and the Armed Native Constabulary Ordinance, 1889 (No. 5).



fourteen years on conviction of any offence, and authorises the whipping by order of the Court of adult males convicted of manslaughter, attempt to murder, offences against the Imperial Offences against the Person Act, 1861, (y) ss. 11, 18, unlawfully cutting, stabbing, or wounding, or aggravated assault as defined in Ordinance No. 6 of 1896.

## 1906

### Ordinances passed—21.

**Consolidation and Interpretation.**—In 1906 a new 8vo edition was issued of the Ordinances from 1875—1905. The edition is a consolidation and not merely a reprint. It was prepared under the authority of an Ordinance of 1903, (z) and is, as to the Ordinances contained in it, the sole and proper Ordinance Book of the Colony. As part of the process of the consolidation the numbers of the Ordinances in the new edition have been changed from those given in the former yearly issues of the Ordinances. The arrangement of the edition is chronological and not under titles. The index refers the reader, not to the page of the edition, but to the year, number, and section of the Ordinance indexed.

**Interpretation.**—Ordinance No. 18 (a) repeals Ordinance 2 of 1875 and lays down rules of interpretation based mainly on the Imperial Interpretation Act of 1889 (b), but partly on the Australian Commonwealth Act No. 2 of 1901 (c). Incidentally it requires judicial notice to be taken of Proclamations (s. 18).

**Immigration.**—Two Ordinances deal with immigrants.

**Polynesian.**—No. 4 amends the Polynesian Immigration Ordinance (No. 21) of 1888 (d) by abolishing the Public Trust Account and the Polynesian Immigration Fund created under that Ordinance, and by transferring to the general revenue account of the Colony the balance standing to the credit of the account and fund (s. 3). It places upon the general revenue the charges formerly borne by the account and fund, including the cost of returning immigrants to the places where they were recruited, and the payment to immigrants of sums paid into the account as their wages by employers before May 17, 1906 (s. 4). The Ordinance makes new provision for the payment of wages of indentured immigrants. The wages are to be paid by the employer to the magistrate of the district in which the immigrant is indentured, a wages list is lodged where the payment is made, and the payment is certified therein by the magistrate.

(y) 24 & 25 Vict. c. 100.

(z) See *supra*, p. 295. Certain revisions effected by Ordinance No. 9 of 1906 are embodied in this edition.

(a) See *infra*, p. 305.

(b) 52 & 53 Vict. c. 63.

(c) See *supra*, vol. i. p. 404.

(d) Printed in the new Ordinance Book as No. 5 of 1888.

The magistrate pays to the immigrant not more than one-quarter of the wages paid in, and the balance is transferred to the Polynesian Wages Account and paid over to the immigrant when his indentures expire. Sums left unclaimed for five years after they fall due are transferred to the general revenue account (ss. 5-10).

The right to have a free return passage home is restricted to the case of immigrants coming to the Colony after May 17, 1906, who are entitled to a free passage home within ten years of the time when the right first accrued. This applies to cases where the immigrants re-indenture themselves instead of returning home on the completion of their first indentures. The right extends to children of immigrants entering the Colony with them till they are twenty-four, and to children born in the Colony till they are twelve (s. 11).

Certain amendments are made in the provisions for extending indentures (s. 12), and provision is also made for allowing under conditions the temporary transfer of an indentured immigrant from one to another plantation of his employer (s. 13).

*Indian.*—Ordinance No. 8 makes, as to free return passages for Indian immigrants entering the Colony after May 17, 1906, and their children, arrangements similar to those above stated as to Polynesians. But the free return passage must be claimed within two years of the time when the right to it first accrued.

*Lunatics.*—Ordinance No. 19 puts an end to the Lunatic Immigrants Fund, (e) and transfers to general revenue the balances to the credit of the fund and imposes on the general revenue the charges formerly falling on the fund.

*Master and Servant.*—No. 7 amends the Masters and Servants Ordinance (No. 9) of 1890 (f) by substituting for the words "fixed rate of 2s. for every month over which the contract shall extend" a sliding rate, viz. "such rate per month of the term of the contract as the Governor in Council may prescribe as the rate at which the native tax may be commuted in the district where the contract of service is made."

*Sea Carriage.*—Ordinance No. 14 applies to ships carrying goods from the Colony to places outside the provisions of the Australian Commonwealth Act, 1904, No. 14, ss. 5-8 declaring void and prohibiting the insertion in shipping documents of clauses relieving from liability for damage caused by improper storage, condition of the hold, and improper manning and equipment, and implying certain clauses in the bill of lading.

*Criminal Procedure.*—Ordinance No. 15 (g) fixes the dates for the

(e) Created under the Public Lunatic Asylum Ordinance (No. 3) of 1884, s. 45.

(f) Printed as No. 2 of 1890 in the new Ordinance Book.

(g) This Ordinance repeals ss. 2 and 64 of the Criminal Procedure Ordinance, No. 10 of 1875, printed in the new Ordinance book as No. 4 of 1875.

ordinary sessions of the Supreme Court for criminal business, viz. April 21st, July 21st, September 21st, and December 1st, and empowers the Chief Justice to adjourn the ordinary sessions or to hold special additional sessions. It further provides for the summoning of assessors for criminal trials in the Supreme Court.

**Criminal Evidence.**—Ordinance No. 17 is an adaptation to the Colony of ss. 1–3 of the Imperial Criminal Evidence Act, 1898. (*h*)

**Railways and Bridges.**—Ordinance No. 10 amends s. 1 of Ordinance No. 3 of 1896 and provides for the punishment on summary conviction of persons injuring or attempting to injure bridges or to injure or obstruct railways or tramways, or throwing missiles at engines or trains.

**Defence.**—Ordinance No. 3 repeals the Volunteer Ordinance, 1898 (*i*) (s. 2), and provides for the establishment of a rifle association in and for the Colony (s. 3) formed of the members of rifle clubs duly formed in accordance with regulations made by proclamation of the Governor, but to be submitted to the Legislative Council for their approval. The subjection of the clubs to the regulations is conditional on their passing a resolution declaring willingness to come under the regulations (s. 8).

In case of actual or apprehended invasion or of disturbance threatening the security of life or property, the Governor may by proclamation call out for actual service the whole association or any specified club or clubs. Disobedience to the call entails penalties; but the service, except by consent of the member, must be within the limits of the Colony. The Ordinance also provides for military command, discipline and pay. (*k*)

**Dogs.**—Ordinance No. 2—which repeals and re-enacts with amendments the Dog Registration Ordinance (No. 15) of 1884 (*l*)—consists of two parts. The first makes provision for dealing with dogs which are dangerous to person or property. The provisions of Part I. (re-enacting part of the Ordinance of 1884) are stringent. Besides clauses empowering magistrates to order dangerous dogs to be destroyed or kept under control (s. 6) and requiring owners to muzzle dogs known to be dangerous or to have injured any person or cattle or any domestic animal (s. 7), penalties are imposed on a person whose dog in a public place rushes at or attacks any person, horses, cattle, or domestic animal (s. 8). The rule as to *scienter* is abolished as to all injuries done by dogs (s. 11). Any person who sees a dog at large biting or attacking any person or any horse, cattle, or poultry, or who is himself attacked or bitten, may destroy the dog (s. 9), and when a dog is running at

(*h*) 61 & 62 Vict. c. 36.

(*i*) See *supra*, p. 291.

(*k*) Regulations made under the Ordinance were proclaimed on June 11, 1906.

(*l*) Printed in the new Ordinance Book as No. 8 of 1884.



large among and worrying cattle or poultry the owner of the animals or his servant or agent may destroy the dog (s. 10).

The second part of the Ordinance operates only in places where it is brought into force by proclamation of the Governor (s. 4 [2]). It continues the system of registration of dogs established in 1884 at a fee of 2s. 6*d.* The only novel provision is that for a system of badges and for the seizure of badgeless dogs (ss. 24–27). In the case of native towns provision is made for registering two dogs without fee in the name of the chief of the town (ss. 30, 31).

**Towns.**—Ordinance No. 5 (*m*) establishes for every town a Valuation Appeals Board to hear appeals against assessments by the town board. The tribunal consists of the stipendiary magistrate and two members appointed by the Governor (s. 2). It also gives town boards power to make bylaws as to lights on vehicles (s. 4).

**Shops.**—Ordinance No. 11 provides for the early closing of shops and regulates the hours of employment therein. The closing times are seven and ten o'clock on Saturdays and all day on public holidays; and assistants may not be kept for more than half an hour after closing time (s. 3).

**Fruit Export.**—Ordinance No. 21 makes a licence necessary to authorise fruit export beyond a small quantity of bananas, and provides for the inspection of fruit for export to see that it is in accordance with the regulations as to condition, etc.

**Water Supply.**—Ordinance No. 6 amends the Swan Water Supply Ordinance (No. 12) of 1886 (*n*) by distinguishing between rates for domestic and non-domestic purposes (s. 2) and by revision of the power of the Water Commissioner as to pipes, inspection, repairs, meters, and the charges for non-domestic supply and supply to vessels.

**Lands Acquisition.**—By Ordinance of the Colony (1878, No. 1, Crown acquisition, and 1905, (*o*) No. 14, native lands) power has been given to acquire lands for public purposes. The definition of public purposes in these Acts is extended by Ordinance No. 16 of 1906, so as to include any undertaking, proposal, or policy which appears to the Governor in Council desirable or directly benefiting the Colony.

## 1907

### Ordinances passed—15.

**Interpretation.**—No. 3 adds to the Interpretation Ordinance (No. 18) of 1906 (*p*) a definition of “native” as every “aboriginal native of Fiji,” and every “aboriginal native of Polynesia” domiciled in that Colony.

(*m*) This Ordinance repeals s. 56 of the Towns Ordinance (No. 16) of 1883, printed in the new Ordinance Book as No. 5 of 1883.

(*n*) Printed in the new Ordinance Book as No. 6 of 1886.

(*o*) See *supra*, p. 300.

(*p*) See *supra*, p. 302.

**Elections.**—No. 15 amends the electoral regulations established in 1904, as to the registration of electors and the conduct of elections of certain members of the Legislative Council.

S. 3 debars from registration as voters in Suva or Levuka persons who have not their usual dwelling-place in the town, and prohibits entry on district registers of the names of persons whose usual dwelling-place is in Suva or Levuka.

The time for sending in claims is extended (s. 5), and the title "country members" is substituted for "planter representatives" (s. 6).

**Government Savings Banks.**—No. 4 provides for the deposit of small savings in Government Savings Banks on the security of the colonial revenue. Under the scheduled regulations the maximum deposit is £200, and the utmost that may be deposited in one year is £100, and the interest paid is  $2\frac{1}{2}$  per cent.

**Native Tax.**—No. 2 provides for the commutation at the prescribed provincial rate of commutable native tax paid by Fijians.

**Pensions.**—No. 13 provides for the grant of pensions and gratuities to persons who have been in the public service of the Colony.

**Customs.**—No. 8 repeals the Customs Duties Ordinances of 1898 (*q*) and 1900, (*r*) and substitutes a new customs tariff. The new tariff contains: (1) a list of specific duties, shorter than in the repealed Ordinances; (2) a general duty of  $12\frac{1}{2}$  per cent. *ad valorem* on articles not specified nor exempted; (3) a list of exemptions, shorter than under prior Ordinances. (*s*)

**Police.**—No. 7 imposes penalties for assaulting, resisting, refusing to assist, or personating, a member of the constabulary, (*t*) and gives to officers or non-commissioned officers power *without warrant* to board and search any vessel in Colonial waters, if there is reasonable ground to suspect that there is on board any property stolen or unlawfully obtained (s. 4).

**Roads.**—No. 12 deals with the construction and upkeep of roads. It creates a Central Road Board (not elective) of five members, which is to have the care of all roads, streets, and thoroughfares, proclaimed in public by the Governor, and to make new roads, etc., and generally to provide for the upkeep, etc., of public roads. Each province is to have a provincial board (also nominated) to maintain and repair the roads of the province, and supervise the construction of new roads subject to the Central Board, and to send its annual estimates of what should be spent on the roads of the parish. The Central Board submits

(*q*) See *supra*, p. 290.

(*r*) See *supra*, p. 294.

(*s*) Consular flags and insignia and Government medals or decorations are put on the free list, and church vestments, ornaments, and church building materials are taken off.

(*t*) The chief Ordinance is of 1905, No. 16. See *supra*, p. 301.

to the Governor estimates of the sums needed for roads for the year for inclusion in the Colonial Budget for the year. The Ordinance further provides for the taking of land for roads and the execution of works thereon; and for aligning the roads and preventing encroachments and punishing injury or nuisance to thoroughfares, and for recovering from persons who put excessive weight or extraordinary traffic on roads the damage thereby caused to the roads (s. 37).

**Animals.**—No. 10 makes provision for preventing contagious diseases among stock (defined as horses, cattle, sheep, pigs, goats, dogs, and all other animals). The scheme of the Act is to authorise the Governor to make regulations (subject to disallowance by the Legislative Council) for preventing or eradicating disease, destroying infected stock, fodder, etc., for isolation, disinfection, cleansing, and the like. The cost of isolation of diseased stock falls on the owner (s. 9).

**Lepers.**—Ordinance No. 14 amends the Lepers Ordinance, 1899. (*u*) It provides for establishing segregation stations. It requires notification by householders to a magistrate of the fact that any servant in their houses is, or is suspected to be, a leper, and punishes persons who wilfully harbour or conceal lepers. Power is given to enter and search for suspected lepers. Suspected lepers are taken to a segregation station and a magisterial inquiry is held as to their condition. On the report the Governor may order the removal to an asylum of persons actually suffering from leprosy.

Further provisions are made as to the maintenance and mode of residence of lepers in asylums and for management of their property (ss. 11–15).

**Native Lands.**—Ordinance No. 9 amends in certain details the Native Lands Ordinance of 1905. (*x*)

S. 3, which relates to the tenure, etc., of native lands by Fijians according to native customs, is repealed and re-enacted with modifications (1) requiring disputes arising for legal decision to which the Ordinance of tenure of land among native Fijians is relevant to be settled on evidence as to native customs and usages; (2) allowing native owners to sell or lease land to native Fijians under the Ordinance.

S. 4 is also repealed and native lands are made inalienable otherwise than by native custom or the consent of the Governor in Council.

Leases of native lands are to be made only in a prescribed form which under the 1905 Ordinance applied only to leases to persons not native Fijians. New provisions are made for the settlement of disputes the parties to which are Fijians as to the ownership of native lands. (*y*)

(*u*) See *supra*, p. 292. Fiji Revised Ordinances (ed. 1906), p. 950.

(*x*) See *supra*, p. 300. *Ibid.*, p. 978.

(*y*) S. 4, which repeals and replaces s. 16 of the Ordinance of 1905.



The chief changes are the substitution of Fijians named by the Governor for the native head-men as assessors, the requirement of a written record of the evidence, and the substitution of appeals to the Chief Justice for appeal to the Governor in Council.

Penalties are imposed for bribing chiefs or other natives with a view to influence decisions (s. 5).

**Contracts with Natives.**—No. 5 amends the Native Dealings Ordinance (No. 3) of 1904, (z) by prohibiting the registration of an executory contract with an aboriginal native of Fiji if it appears that the contract is not to be fully performed on both sides within one year of the making of it—unless the contract has been approved by the Governor in Council.

**Indian Immigrants.**—No. 6 amends in certain details the principal Ordinance regulating immigrants from India, No. 1 of 1891. (a) The principal alterations are increase of the penalties for desertion by an indentured immigrant (ss. 3, 4) and imposition of penalties on employers, foremen, etc., who assault, beat, or in any way ill-use an indentured immigrant (s. 2). Provisions are also made authorising the temporary transfer of an indentured person from one plantation to another of the same employer (ss. 5, 6, 7).

(z) See *supra*, p. 298.

(a) Published as revised up to 1905, Fiji Ordinances (1875–1905), p. 707.

## SOUTH AFRICA.

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### 1. CAPE OF GOOD HOPE.

1898 (a)

Acts passed—44.

**Dutch Reformed Church.**—No. 9 provides that the Dutch Reformed Church may be extended beyond the limits of Cape Colony, and that congregations beyond the limits may be represented in the Synod, and governed by the laws and regulations of the Church. The doctrine of the Church is defined with reference to Ordinance No. 7 of 1843. The Act is to take effect upon request by the Synod to the Governor.

**Xanthium Spinosum (Burr-weed).**—No. 18 (Divisional Councils Act Amendment) directs the divisional councils of the Colony to warn owners and occupiers of land of the liability incurred by neglecting to extirpate the burr-weed, and defines the penalty.

**Parliamentary Representation.**—No. 19 creates new electoral divisions and additional representation in existing divisions. It defines the limits of electoral provinces, and contains regulations for elections.

**Royal Navy.**—No. 20 (a<sup>1</sup>) provides that “from and after the taking effect of this Act there shall be paid annually to the Admiralty” (of the United Kingdom) “the sum of thirty thousand pounds out of the public revenue of this Colony, as a contribution towards the annual expenditure by the Imperial Government in connection with her Majesty’s Naval Service.”

(a) Contributed by Israel Davis, Esq.

(a<sup>1</sup>) See *infra*, p. 316.

**Court of Appeal.**—No. 22 repeals clauses in Act 35 of 1896 which are inconsistent with or repugnant to this Act. It gives the Supreme Court jurisdiction to hear appeals from any Court from which appeals have been or may be prescribed to the Court by the Africa Order in Council, 1889 (October 15), subject to the right of appeal to the Privy Council. Procedure may be regulated by rules under the Order in Council or by any special law, or by order of the Supreme Court. The Act provides for appeals to the Supreme Court of the Cape of Good Hope from the High Court of Southern Rhodesia when the amount in dispute exceeds £100, and by special leave when the amount is less, subject to further rights of appeal to the Privy Council. Procedure on such appeals is to be regulated by the ordinary rules of procedure on appeal to the Supreme Court, so far as not inconsistent with the Southern Rhodesia Order in Council, 1898. Power is given to the Supreme Court to act as a Court of Appeal in certain criminal matters tried in Southern Rhodesia.

**Sale of Liquor.**—No. 28 enables any licensing court to impose conditions short of total prohibition upon the holder of the licence. These conditions must include a prohibition against selling liquor to natives at any railway refreshment-rooms. Outside the area of a municipality or of the operation of the Village Management Act of 1881, the licensing court is not to renew an existing licence when more than half the voters for the divisional council of that district shall within fourteen days before the meeting of the Court object to renewal.

**Arbitration.**—No. 29 provides for the settlement of differences by arbitration. In general this Act follows the English Arbitration Act, 1889. (b) The arbitrator need not be named in the submission. Criminal matters, so far as the prosecution or punishment thereof is concerned, and, unless by special leave of the Court, matters relating to status, matrimonial causes, or matters in which minors or persons under advisability may be interested, are excluded from the operation of the Act.

**Mining for Precious Minerals.**—No. 31 consolidates and amends the laws relating to prospecting and mining for precious minerals. Any persons of good character may obtain a licence to prospect for minerals. The licence lasts for twelve months, enables the holder to peg out a claim 7500 feet long and 800 feet broad without further payment, if on Crown lands, and for such consideration, if on private property, as may be agreed with the owner. Upon discovery of payable mineral, the rights of prospecting become converted into the right to select and peg out twenty-five claims of 150 feet by 800 feet. If the Governor does not proclaim a reef-digging on that place, the Act provides for other



rights to be enjoyed by the first discoverer; and if a reef is proclaimed and produces 25,000 ounces of gold in three years, the discoverer becomes entitled to £5000. "Salting" and false declarations are made punishable. The Act contains provision for the declaration and survey of areas as reef-diggings. The rights of private owners are declared. They include a right to a large proportion of the mining licence moneys. Prospectors are prohibited from searching within two hundred yards of an inhabited house. No property is to be proclaimed a reef-digging where the owner neither prospects nor allows others to prospect. The owner of land proclaimed as a reef also obtains the right to a grant of mining leases of from two to five years' duration over any tenth part of his property so proclaimed, after the first discoverer has pegged out his claims. Somewhat similar provisions are made in respect to alluvial diggings.

**Appeals from Native Territories.**—No. 32 provides for appeals from the courts of the chief magistrate in native territories to the Supreme Court in cases in which one of the parties is a European.

**Natives.**—No. 41 (Transkeian Territories' Penal Code Amendment Act) repeals s. 200 of Act No. 24, 1896, makes the head of a kraal responsible for cattle-thefts, and provides facilities for tracing and following stolen cattle.

**Rogues and Vagabonds.**—No. 44 (Police Offences Act Amendment Act) prohibits males, under penalty of fine or imprisonment, from living upon the earnings of a prostitute and from committing other similar offences.

1899 (c)

Acts passed—48.

**University Qualifications for Legal Profession.**—No. 3 enacts that notwithstanding an Act of 1896, it shall be lawful for the Supreme Court to admit to practise as advocates therein persons who, having, on or before August 14, 1896, obtained after examination the degree of B.A. of the University of the Cape, shall thereafter have been admitted to the *ad eundem* degree in law of the said University. By No. 14 an attorney must have passed the matriculation examination at the Cape University or an equivalent examination.

**Customs.**—No. 5 amends the Customs Union Tariff Act of 1889, provides for paying over to the Government of Southern Rhodesia 85 per cent. of the customs collected, in lieu of the rebate formerly payable, and lays down conditions under which goods may be removed overland under bond from ports in Cape Colony to Southern Rhodesia. No. 21 imposes a duty on the export of Angora sheep (£100 per ram

(c) Contributed by Israel Davis, Esq.

or ewe), with an exception in favour of export to South African States, territories, or Colonies which have imposed equivalent export duties.

**Natives.**—No. 5 empowers the Governor to suspend the operation of the Native Locations Acts in areas in which large numbers of natives are employed in mines or other works, and to lay down other regulations, including the payment of a hut-tax of ten shillings annually. No. 6 regulates the engagement of natives to work beyond the Colony. Labour agents are to be licensed. No. 16 makes extensive grants of land to certain native chiefs, to be forfeited if canteens, etc., be established on the territories granted. No. 30 amends the law with regard to native locations.

**Colonial Medical Council.**—No. 7 amends the Act of 1891. If any person licensed as a medical practitioner or practising midwifery for profit shall, through uncleanness or failure to take ordinary precautions against puerperal fever or any similar disease, cause injury or ill-health to any lying-in woman, such person may be fined £10, or imprisoned for one month, but no prosecution shall be initiated until the Attorney-General shall have, after consultation with the Medical Council, if he thinks such consultation necessary, decided upon prosecution.

**Mining for Precious Stones.**—No. 11 (*c*<sup>1</sup>) consolidates and amends the law of prospecting and mining for precious stones. Any person may take out a licence to prospect on Crown lands or private property, the title to which contains a reservation to the Crown of precious stones and minerals, and with the consent of the owner. On Crown land the prospecting area is a circle of one thousand yards in diameter, and the licence-holder may graze six horses or mules, or sixteen oxen, and take wood and water for his domestic use. Fifty claims in block may be selected. On private property the landowner is entitled to make the next selection of fifty blocks on payment of licence-moneys, and is entitled to share in the licence-moneys of proclaimed mines if he provides a depositing site. Provision is made for adding to the Mining Boards formed under the Act of 1883, and the election and powers of Boards are dealt with. The native reserves in British Bechuanaland are treated as Crown lands, but a share in the licence-moneys and other compensation for surface damage is to be paid to the Civil Commissioners.

**Crown Lands.**—No. 26 empowers the Governor to establish a board for reduction or remission of the purchase price, quit-rents, etc., of Crown lands, and to fix "a fair rent or price." The Governor is at once authorized to reduce the quit-rents of more than a hundred specified farms by specified amounts; and on the recommendation of the Board to remit all or any arrears. The reductions immediately

(*c*<sup>1</sup>) See *infra*, p. 343.

authorised are of large amounts—from £37 to £12, from £122 to £30, with further small permissible reductions, etc.

**Legal Procedure.**—No. 13 empowers resident magistrates to put interrogatories to witnesses in aid of similar civil Courts in neighbouring States and Colonies which (in the opinion of the Governor) make reciprocal provision.

**Water Courts.**—By No. 40 (*c*<sup>2</sup>) the Governor may appoint local Courts to determine disputes as to water rights. Unless there shall be good cause to the contrary, water districts shall coincide with magisterial districts. The Courts shall consist of a resident magistrate with two landowners selected from a list of assessors. The Courts may grant to persons entitled to divert water a further right to erect a weir or dam after notice to owners affected, but orders under this section may be appealed against as in any civil case.

**Labour in Shops.**—No. 21 (*d*) adopts in principle the Imperial Act of 1899 (*e*) relating to seats for female shop assistants. No. 32 provides that by consent of two-thirds of the shopkeepers in a district, shops may be compulsorily closed on Saturday or Thursday afternoons, except in weeks in which public holidays occur. The Act includes barbers, but not newsagents.

**Employment of Children.**—No. 44 adopts the principle of the Imperial Act (*f*) as to the employment of children at places of public entertainment. The Attorney-General is constituted the officer to license employment.

**Scab Act.**—No. 28 amends the Act of 1894, and establishes a Scab Board in each division of the Colony. Infected sheep are to be simultaneously dipped under inspection.

**Protection of Birds and Fish.**—No. 42 enables the Governor upon petition of local authorities to prohibit under penalty the destruction of particular kinds of birds. No. 43 empowers him to delimit fishing areas in the rivers and territorial waters of the sea, and to prohibit and control modes of fishing, use of nets and trawls, within such areas.

**Registration of Voters.**—No. 48 amends the law of Parliamentary registration. It deals with qualification by means of twelve months' occupation of premises and twelve months' receipt of salary or wages, and with disqualification by reason that the proposed voter is not a British subject, has been convicted of crime, is incapacitated on account of personation or corrupt or illegal practices, or is a minor or declared lunatic. All bars, canteens, etc., are to be closed on the day and during the hours of polling.

(*c*<sup>2</sup>) Repealed by No. 32 of 1906, *infra*, p. 345.

(*d*) See *infra*, p. 327.

(*e*) 62 & 63 Vict. c. 21, *supra*, vol. i. p. 39.

(*f*) 57 & 58 Vict. c. 41, incorporated in 3 Edw. VII. c. 45, see *supra*, vol. i. pp. 101, 102.



**1900 (g)**

## Acts passed—21.

**War Compensation.**—No. 16 authorises a loan of £250,000 for the purposes of partially meeting claims to compensation that may be assessed by any commission duly authorised to make inquiry into the loss sustained by inhabitants of certain districts of the Colony which have been subject to incursion by the armed forces of the late South African Republic and Orange Free State, or in which martial law has been duly proclaimed.

**Indemnities.**—By No. 6 (Indemnity and Special Tribunals Act) the Governor and the officer commanding her Majesty's forces, and all persons acting under their authority and in good faith in regard to acts during the existence of martial law, are indemnified. Provision is made for the trial and punishment of persons who have taken up arms against the Queen or otherwise assisted her enemies, and for compensating persons who have sustained direct loss and damage through military operations, or through the acts of the enemy, or of rebels. The Governor is empowered by proclamation to establish a special Court for high treason and political crimes. Two, at least, of the members of the Court are to be judges of the Supreme Court of the Colony, and the third should be either such a judge or a barrister or advocate of the Supreme Court, Eastern Districts Court, or High Court of Griqualand, and of not less than ten years' standing, who was, at the date of the passing of the Act, duly practising as such advocate in the Colony and is not a member of Parliament. The Governor is empowered to appoint commissioners, in numbers such as to form some multiple of three, to inquire into and determine all cases of high treason or crimes of a political character, committed before or within six months after the passing of the Act, which the Attorney-General should require any three of them to inquire into.

By No. 18 the Governor may validate anything irregularly done in connection with the election of members of local authorities, etc. By No. 21 all notices issued by the Governor between October 11, 1899, and this Act, authorising the suspension of parts of Customs Act, are confirmed and made law, and the non-payment of duties is legalised.

**Census.**—By No. 11 (*h*) provision is made for a census to be taken of the number of persons and the number of each kind of live stock upon such day in 1901 as the Governor may proclaim. But in default of proclamation the census shall not be taken save upon a date in 1901 or 1902 which may be fixed by both Houses of Parliament.

**Military Burial Grounds.**—By No. 14 (*i*) the Governor is authorised

(g) Contributed by Israel Davis, Esq.

(h) See *infra*, p. 318.

(i) See Natal, No. 19 of 1901, *infra*, p. 357.

to expropriate and maintain as a burial ground any land in which officers, non-commissioned officers, or men belonging to the Imperial or Colonial forces, or to the forces of the late Orange Free State and South African Republic, have been buried. But no such ground shall be used for the burial of any body without the consent of the Governor and the local authority. The Governor may acquire rights of way. Compensation is to be paid under the general Act of 1882. Rights and land acquired by the Governor may be transferred to her Majesty's Secretary for War on payment of the cost. The Governor, at the request of the Secretary for War, may cause land expropriated for the purposes of the Act to be enclosed, maintained, and kept in an orderly condition.

**Exportation of Arms.**—By No. 15 the Governor is authorised to prohibit the exportation of arms, ammunition, military and naval stores, and any article which he shall judge capable of being converted into, or made useful in increasing the quantity of, arms, ammunition, or military or naval stores, to any place whenever he shall judge such prohibition expedient to prevent such arms, etc., being used against the subjects or forces of the Queen or against forces engaged in military or naval operations in co-operation with hers.

**1901** No legislation was passed in this year.

**1902** (j) Acts passed—47.

**General Indemnity** (No. 4).—This Act indemnifies the Governor of this Colony and the Officer Commanding the Forces and all persons acting under their authority, in respect of certain acts ordered or done in good faith (which is to be presumed until the contrary is shown by the complainant) for the public safety, during the existence of martial law. The Act also validates certain arrests and sentences passed by Courts martial or military Courts and gives power to the Attorney-General to declare, in cases where any doubt arises, that any act was done under "proper authority."

Powers are conferred upon three Commissioners, appointed in England, to inquire into sentences passed by military Courts, and it is made lawful for the Governor to give effect to their recommendations.

**Parliamentary Indemnity.**—No. 5 indemnifies the Governor and others in respect of prorogations of Parliament rendered necessary by the war and the imposition of martial law; also in respect of the non-registration of voters resident within the time limited by the

Act of 1899. (*k*) The Act further provides that a fresh registration of voters shall be commenced.

**Financial Indemnity** (No. 6).—The Governor is indemnified against the issue of public money to meet (1) the ordinary and annually recurring expenditure necessary for the public service up to June 30, 1902; (2) the expenditure to suppress the bubonic plague; (3) expenditure incurred in defence of the Colony consequent on invasion and rebellion; (4) and other special expenditure up to June 30, 1902.

**Military Structures Removal and Compensation** (No. 7).—This Act provides that all buildings and structures placed on private or municipal property by the military authorities, during the war, shall be removed within four months from the passing of this Act. Owners of land are not to be entitled to compensation, in respect of the occupation of lands by buildings or structures during this period, but they are to receive compensation for damage resulting from failure to remove such buildings within the limited time; such compensation may be agreed upon between the parties or determined by arbitration.

In certain cases, it is provided that the landowners themselves may remove obstacles in the way of their carrying on agricultural pursuits.

**Administrations Indemnity** (No. 10).—This Act indemnifies the Governor, Government officials, and others concerned, in respect of the violation of certain statutory duties; it validates acts done in good faith by municipal councils and village boards of management, also proceedings of licensing courts. A list of the acts for which indemnity is given is contained in the schedule.

The Act provides that the secretary of every council shall make out a triennial list of voters, to be called the "Voters' Roll," and that elections of councillors shall be held. A valuation of all ratable property is to be made, and the appointment of auditors by the Government is legalised.

Power is given to the Governor, in certain municipalities, to appoint councillors, and, in certain communities, village management boards.

**Navy Contribution** (No. 14).—This Act provides for the further annual payment to the Admiralty of the United Kingdom of £20,000, in addition to the sum of £30,000 required to be paid by the Act of 1898. (*l*)

**Victoria Day**.—No. 15 sets apart the late Queen's birthday (24th May) as a "public holiday" and "non-business" day within the meaning of the Bills of Exchange Act, 1893.

**Compensation for War Losses** (No. 17).—This Act authorises a further

(*k*) No. 48 of 1899. See *supra*, p. 313.

(*l*) No. 20 of 1898. See *supra*, p. 309.



loan of £1,250,000 to meet claims for compensation for war losses. The persons to whom payment of compensation may be recommended by the Commission, appointed by the Governor in pursuance of powers given him by Act No. 6 of 1900, <sup>(m)</sup> may be classified as (1) those who have not been found guilty of the crime of high treason by any of the ordinary or the special tribunals of the Colony; and (2) those who have been found guilty of high treason. The persons who have not been convicted are to be the first considered, and convicted persons are not to be compensated in respect of losses sustained prior to their capture or surrender.

**Forests (No. 20).**—This Act amends the Forest Act of 1888, and empowers the Governor to make regulations for the control of Crown forests. The Act prohibits alienation of Crown forests without the consent of Parliament.

**Electric Telegraph.**—No. 23 prohibits the erection and use of any mast, standard, or apparatus of any kind, for the purpose of aetheric signalling without wires, by means of electricity, etc.; or the erection or construction of any line of electric telegraph, except under licence granted by the Governor.

**Illegal Practices (No. 26).**—This Act, which is apparently based on the English Corrupt and Illegal Practices Prevention Act, 1883, <sup>(n)</sup> amends the Corrupt Practices at Elections Prevention Act, 1859, and the Parliamentary Elections Act, 1883, and provides that—

A person guilty of an illegal practice, shall, on conviction, be liable to a fine not exceeding £100, and in default of payment to imprisonment with or without hard labour, for any term not exceeding six months.

The Act then declares what payments are illegal, what persons may be legally employed for payment, and what premises may not be used as committee-rooms.

The Act further provides that if upon trial of an election petition it is proved that any corrupt or illegal practice has been committed, with the knowledge and consent of any candidate or his agents, the election of such candidate is to be declared void, and a fresh election held. Any candidate who shall be found to have committed any such corrupt or illegal practice shall be incapable of being elected to, or of sitting in, either House of Parliament during the five years next after conviction, but it is provided that such person shall have the right to appeal to the Supreme Court.

The appointment of election agents and election expenses are then dealt with.

<sup>(m)</sup> See *supra*, p. 314.

<sup>(n)</sup> 46 & 47 Vict. c. 51.

Lastly it is provided that—

Not less than two judges of the Supreme Court shall have jurisdiction to try and determine all charges of illegal practice or contravention of any provision of this Act.

**Census (No. 29).**—This Act amends the Census Act of 1900, (o) and provides that “an account or census shall be taken of the number of persons and the number of each kind of live stock, within the Colony of the Cape of Good Hope, including any territory annexed thereto, on such day and month in the year 1903 as the Governor may proclaim.”

**Gaming Houses (No. 36).**—Part II. of this Act deals with Gaming, Wagering, and Gaming Houses, and gives power to the resident magistrate or assistant-resident magistrate to authorise, by special warrant, any police officer to enter, at any time of the day or night, any house suspected of being kept as a gaming house.

Any person being convicted of keeping a gaming house shall, for the first offence, be liable to a fine not exceeding £200, or in default to imprisonment, with or without hard labour, for a period not exceeding six months; and for a second offence, to a fine not exceeding £500, or to imprisonment, with or without hard labour, for a period not exceeding twelve months, or to both such fine and imprisonment.

It is not necessary, in support of any charge for keeping a gaming house, to prove that any money has passed.

By s. 11—

All contracts whether verbal or in writing, by way of gaming or wagering, shall be null and void, and no suit shall be brought or maintained in any court of law for recovering any sum of money or valuable thing alleged to be won upon any wager, or which has been deposited in the hands of any person to abide the event on which any wager has been made. (p)

It is also provided that any person winning money by fraud, unlawful device or ill-practice in playing cards, bearing a part in the stakes, or in betting on the hands of those playing, is to be deemed “guilty of theft of such money by means of false pretences.”

Part III. deals with Betting Houses, and makes similar provisions as regards entering and inspecting suspected houses, and as regards penalties.

Part IV. deals with Brothels and Immorality, and provides that any person convicted of keeping a brothel shall be liable to be sentenced for the first offence to imprisonment, with or without hard labour, and without the option of a fine, for a period not exceeding three months, or to

(o) See *supra*, p. 314, and repealing Act No. 4 of 1903, *infra*, p. 320.

(p) See *Sonnenberg v. Flower*, Supreme Court Reports, 1875, p. 4.

a fine not exceeding £100; and for the second offence to imprisonment with or without hard labour, and without the option of a fine for a period not exceeding six months, or to a fine not exceeding £300, or to both fine and imprisonment.

Husband and wife may be jointly prosecuted under this Act.

Provision is then made regarding Procuration, and persons trading in prostitution, and by s. 34—

It shall be unlawful for any white woman to voluntarily have illicit sexual intercourse for the purposes of gain with any aboriginal native; and any white woman contravening the provisions of this section shall be liable, on conviction, to be imprisoned with hard labour for a period not exceeding two years.

The Act concludes by providing that no action or prosecution shall be brought in respect of anything done in execution of this Act, unless—

- (a) One week's previous notice of his intention to bring such action, or prosecution, shall have been given by the plaintiff or complainant to the defendant.
- (b) The action, suit, injunction, or prosecution is brought or commenced within three months of the date of the act or omission complained of, or of the cessation of damage continuously resulting therefrom.

The resident magistrate shall have jurisdiction to try all offences against this Act.

**Outspans (No. 41) (q).**—This Act empowers the Governor to sell any outspan being Crown land, subject to certain conditions set out in the Act, to resume unused outspans, and to cancel outspan servitudes. He is further authorised to appoint persons to inquire into, and to make regulations concerning the purchase, sale or resumption of any outspan.

**Inebriates (No. 39).**—This Act amends the law relating to the control and cure of inebriates, and among other things provides for the detention of inebriates guilty of crime in any Inebriate State Reformatory for a term not exceeding three years, and further provides for the detention of any person who has been four times convicted of drunkenness for a similar period.

**Immigration (No. 47). (r)**—This Act places restrictions on "prohibited immigrants" entering, either by land or sea, into this Colony, and defines a "prohibited immigrant" as—

- (a) Any person who shall be unable through deficient education to himself write out and sign in the characters of any European language, an application to the satisfaction of the Minister.

(q) See *infra*, p. 345.

(r) Repealed by No. 30 of 1906, see *infra*, pp. 337-339.



- (b) Any person who is not in possession of visible means of support or is likely to become a public charge.
- (c) Any person who has been convicted of any of the following offences, that is to say, murder, rape, theft, fraud, perjury or forgery, and who by reason of the circumstances connected with such offence is deemed by the Minister to be an undesirable.
- (d) Any person who is a lunatic within the meaning of s. 2 of the Lunacy Act, 1897.
- (e) Any person, male or female, who lives on or knowingly receives any part of the proceeds of prostitution.
- (f) Any person who from information officially received by the Minister from any Secretary of State or from any Colonial Minister, or through diplomatic channels from any Minister of any foreign country is deemed by the Minister to be undesirable.

The Act then provides various penalties for the contravention of this Act and of regulations made by the Governor.

### 1903(s)

### Acts passed—16.

**Census** (No. 4).(t)—This Act repeals two former enactments and provides that a census shall be taken, on a day fixed by the Governor, of the number of persons, and the number of each kind of live stock, within the Colony.

The Governor is empowered to make regulations and to appoint a “Director of the Census” to carry out the work of census-taking.

All letters and parcels addressed to the Director are to be delivered free of postage. Various penalties are provided for contravening the Act, and for infringing the regulations issued by the Governor.

**Imported Meat** (No. 9).—Provides that every person exposing meat for sale shall keep “frozen imported meat” separate from fresh meat; any person failing to comply with this provision shall be liable to a fine of £100, or in default of payment, to imprisonment with or without hard labour for not exceeding three months; and it is further provided that any person selling or exposing for sale “frozen imported meat” as fresh meat, shall be liable to a fine of £100, or in default, to imprisonment, with or without hard labour, for not exceeding three months. It shall be a sufficient defence, if a person charged with an offence under this Act, shall prove he used due diligence to enforce the execution of this Act, and that the offence in question was committed by some other person without his knowledge.

**Attorneys** (No. 11).—This Act amends the Act of 1883 and amends the law relating to the admission of attorneys, notaries public, and conveyancers.

(s) Revised by the Hon. Sydney T. Jones.

(t) See *supra*, p. 318.

It provides that after December 31, 1903, no person other than an attorney shall be admitted and enrolled as a conveyancer, or as a notary.

It is further provided that an advocate of the Supreme Court may be admitted as an attorney, provided he shall have served eighteen months under articles of clerkship to an attorney practising in this Colony, and provided he shall have passed the examination for attorneys, required by the rules of the Supreme Court.

The Incorporated Law Society of the Colony is to have the same jurisdiction over conveyancers as over attorneys and notaries.

## 1904(u)

## Acts passed—37.

**Parliamentary Representation (No. 5).**—Among the Public General Acts of the session the most important—as affecting the Constitution—is No. 5, which provides for additional representation in Parliament. This Act partly relieves certain electorates from the hardship of under-representation. The Western, South-Eastern, and Eastern Electoral Provinces are each given one additional member in the Upper House. The electorates of East London, George, King William's Town, Paarl, Oudtshoorn, Port Elizabeth, Queenstown, Uitenhage, Woodstock, and Wynberg are each empowered to return one additional representative to the Legislative Assembly; and the City of Cape Town has conferred on it the privilege of returning two additional members.

The Act requires the elections to be held as soon as may be after its promulgation. It increases, it will be observed, the number of members of the Legislative Council by three, and that of the Lower House by twelve.

**Treason Sentence Commutation and Judicature.**—No. 35 is perhaps next in importance, and is one that should go far towards the removal and obliteration of grievances connected with the late war and rebellion. All sentences for treason are commuted to five years' disfranchisement, from the date of conviction, irrespectively of the "class" in which the accused was convicted; and all persons at the date of the Act unconvicted are to be tried by resident magistrates, and subjected to no further penalty than five years' disfranchisement.

It will be observed that this clemency is not extended to those who were guilty of offences against the usages of civilised warfare; and those remaining unpunished will be prosecuted under the common law in the ordinary criminal tribunals, the special Treason Courts and Commissions being abolished (ss. 6 and 7).

For the purposes of expediting the administration of justice, the

(u) Contributed by the Hon. T. L. Graham, K.C.

Act confers on a single judge of the Supreme Court the full original jurisdiction which theretofore was alone exercisable by a quorum of two judges. The effect of this enactment is to establish divisions of the Supreme Court, the Eastern Districts Court, and the High Court of Griqualand. It confers right of appeal to the Supreme Court sitting as a Court of Appeal. Sub-s. 3 of s. 2 slightly alters the constitution of the latter Court. S. 8 extends the right of trial by jury and in the ordinary criminal tribunals to persons charged with offences against the Diamond Trade Laws, and at the same time abolishes the special Courts at the Diamond Fields constituted by the repealed laws.

With a view to relieving jurors from the onerous duties and prolonged attendances theretofore imposed on them, s. 4 of the Act empowers the Attorney-General to cause twenty-seven additional jurors to be summoned to attend the criminal sittings of the Supreme Courts throughout the Colony. S. 5 empowers suitors against the Crown in its Colonial Government to sue in the superior or inferior Courts within the jurisdiction of which the cause of action may be situate or may arise; and those claiming against the Railway Department may sue in any district through which the railway passes. It will be noted that the section does not increase the jurisdiction of inferior Courts as regards the subject-matter of the suit, but merely confers jurisdiction in suits against the Crown, and claims otherwise within the jurisdiction.

S. 3 scarcely falls within the title of the Act—it removes a disability attaching to the holders of the higher judicial offices, in authorising the judges to receive remuneration for special services performed under Act of Parliament.

S. 9 divests the Chief and Assistant-Chief Magistrates of the Native Territories of their judicial functions in criminal appeals and reviews; and their jurisdiction is transferred to the superior Courts of the Colony.

**War Compensation Awards (No. 30).**—An Act inspired by a desire to remove grievances resulting from the war and rebellion is Act No. 30, which provides for the appointment of a Commission to inquire into awards made by Colonial War Losses Compensation Commissioners, with a view to reporting on their adequacy, and to inquire into claims which have been disallowed, or not finally dealt with, or which were forwarded but were mislaid or lost, or which were never submitted. It empowers the Governor to appoint five Commissioners—one to be a judge—and to give instructions and make regulations for the purposes of inquiry.

**Revenue: Beer and Spirits (No. 36).**—The most important Act of the session from a revenue point of view is No. 36, which imposes an excise on beer and spirits and—for the first time in this Colony—an income tax.



The first part, intituled "Excise," is of a complicated nature, re-enacting, with amendments, certain Acts imposing an excise on beer, and repealing and amending a number of other Statutes.

The Act imposes such an excise and increases the duty already existing on spirits distilled from materials other than wines, grapes, and raisins from 4s. to 10s. per gallon.

The duty on beer is imposed by re-enacting, with amendments, the Acts No. 11 of 1884 and No. 27 of 1885. Under the former—as now amended—the duty payable is 9s. upon every thirty-six gallons of worts of a specific quantity of 1057°, every two bushels of malt used being deemed to produce thirty-six gallons of worts.

The most vital enactment in this Part—the passing of which is remarkable as disclosing a welcome co-operation between the opposing parties in the Legislature—is that providing for the payment of a duty of 6s. on every gallon of proof colonial spirits distilled from wine (including grapes and raisins, husks, etc.) with a proportionate increase or decrease in case the spirits be of a greater or less strength. The duty is payable by the vendor on sale to the consumer (that is to say, to any person other than a licensed dealer or a retailer) and not necessarily by the distiller. This is a feature peculiar to our law—as compared with the Imperial and Colonial Statutes—the object being to make the duty appear as falling rather on the consumer than on the farmer.

The Act contains elaborate provisions in order to secure the payment of the duty; and the Governor is empowered to appoint the necessary officers, and to make regulations for their guidance and generally for the purposes of the Statute (s. 32).

The exemptions from the excise are in respect of spirits consigned or removed for consumption abroad, spirits used for the necessary fortification of wine, and—to the extent of thirty gallons per annum—intended to be appropriated to the private use of the producer.

Another provision peculiar to this law is that contained in s. 40, requiring the Government to open bonded warehouses, in the several wine-producing districts, for the storage of spirits, and to advance on spirits the *bonâ fide* produce of distillers who distil from the produce of land owned or occupied by them (termed "agricultural distillers") a sum not exceeding £14 per 127 gallons at 10 per cent. under proof. For the purpose of making such advances the Government is empowered to raise a loan of £100,000 sterling.

— **Income Tax.**—Part II. (x) imposes an income tax which is calculated to tax wealth rather than mere means of comfortable subsistence. Incomes under £1000 per annum (excepting incomes of

(x) See *infra*, p. 329.

companies and incomes derived from shares) are exempt, and however large the income may be, the first £1000 is exempted. The tax is not a permanent one, and is leviable only on incomes accrued during the year ending on June 30, 1904. On incomes in excess of the £1000 tax is 6*d.* in the pound up to £2000; on those in excess of £2000, an additional 9*d.* in the pound up to £5000; and on incomes in excess of £5000 an additional 1*s.* in the pound. It follows that an income of £2000 pays 1000 sixpences (£25); £3000 pays £25 plus 1000 ninepences (£37 10*s.*), and so on; and that the amount payable by De Beers is very substantial.

The rules for ascertaining "incomes" are fairly clear. The term is defined as embracing all gains or profits derived or received by any person or company in any year, by any means, and from any source within the Colony, and all rents, interests, salaries, wages, allowances, pensions, stipends, charges, and annuities.

The tax is payable on such "incomes" as arise or accrue—

- (a) "To any person *wheresoever residing* from any 'trade' (including profession, calling, employment, business, mining, and quarrying) carried on *in the Colony*, whether the same be carried on by such person or, in his behalf, wholly or in part by any other person ;"
- (b) To any person *wheresoever residing* as salary (accountable for pension purposes in the public service) or by way of pension or allowance from the public revenue ;
- (c) To any person *wheresoever residing* from any kind of property within the Colony, or from loans, investments, deposits of money, or contracts therein ;
- (d) From any source whatsoever within the Colony (a sort of drag-net clause ; sub-clause (4) of s. 50).

But the following incomes are *exempted* from income tax :—

- (a) "The incomes of the Governor and his personal staff" (sub-section (6) of s. 52) as well as of Imperial military and naval officers and servants stationed in the Colony ;
- (b) Income arising to non-residents from Government and municipal debentures, inscribed stock, and Treasury bills ;
- (c) Incomes of charitable, educational, and ecclesiastical public institutions, life assurance, and such other companies or societies as are not carrying on business for profit to be divided among shareholders ;
- (d) Revenue of friendly and building societies, harbour boards, municipalities, and divisional councils.

In assessing incomes the following *deductions* are to be made :—

Losses, outgoings including expenses actually incurred *in the Colony*

in the production of the income, expenditure in repairs of trade premises, machinery, etc., fair compensation for wear and tear of trade machinery, etc., and losses in another trade exercised by the taxpayer himself or by his partner. Payments by civil servants to the Pension Funds and incomes derived from shares in a company liable to pay income tax are also deducted.

No deduction is, however, allowable in respect of domestic or private expenses, cost of maintenance of family and establishment, any loss recoverable under insurance, income tax, or portions of incomes carried to a reserve or capitalised.

From *trade* incomes are *not* to be deducted rent, etc., of dwelling houses or domestic premises, money not exclusively expended for trade purposes, interest which might have been made on capital employed, or debts—except such as are bad or doubtful.

It will have been observed that non-residents are taxed on incomes—with the exemption and deductions referred to—derived from sources within the Colony.

Non-residents whose incomes derived from the Cape Colonial sources do not—after deductions and exemptions—exceed £1000 are of course exempt; that is to say, the income of a resident at home derived from extra-colonial sources is not taken into account; and as long as Imperial officers are stationed in the Colony, it appears that their incomes, though partly derived from purely Colonial sources, are exempt from the tax.

Non-resident companies must be represented by a “public officer” residing in the Colony specially appointed by or in behalf of the company for the purposes of the Act. If no appointment is made, the Commissioner of Taxes is empowered to nominate as “public officer” the director, secretary, or other officer. In the case of banks the chief agent is deemed to be the public officer. Failure to make the appointment and keep it is punishable by a penalty not exceeding £50 per diem. Companies commencing business in the future are required within one month to appoint their representative for the purposes of the Act.

Agents for absentees and trustees are required to deduct the tax payable, and may become personally liable (sub-s. 4, s. 47).

In the case of absentee shareholders or members, the company is deemed to be the agent.

In the case of persons permanently resident out of the Colony, the tax is payable by the attorney or agent; and every person who receives, controls, or manages the income, or remits or pays it, is deemed to be an agent for this purpose; and the Commissioner is empowered to declare a person to be the agent of a non-resident.



Similar provisions apply to permanent or temporary absentees.

The tax on persons under disability is payable by the trustee, guardian, or curator, as the case may be. Generally, in other cases, the income tax is payable by the person who is legally or equitably entitled to receipt of the income.

In the case of the sale or disposal of goods within the Colony by a person outside the Colony (the principal) through a person here (the agent), whether by sample or otherwise, the taxable amount of income is assessed—in the absence of account sales—at 5 per cent. upon the amount received, and the agent is required to furnish the returns and pay the tax.

In the case of persons or firms domiciled abroad and carrying on business in the Colony as shipowners or charterers, the agent here is liable to income tax at £5 in every £100 payable, here or abroad, to the principal or the agent in respect of passengers, live stock, mails, and goods shipped in the Colony.

Special provisions appear in respect of insurance companies and companies whose business extends to other countries, companies not dividing its profits among members in the Colony, and investments within the Colony by life companies (s. 60).

Women married out of community of property are liable as if unmarried.

For the purposes of administration, the Governor is empowered to appoint, from members of the civil service and pensioners, a Commissioner and a Deputy Commissioner of Taxes and such assessors and clerks as may be necessary. All officials are bound to secrecy.

The mode of assessment is clearly provided for in s. 65 and the following sections. An appeal lies to a Court (especially constituted by proclamation) which may state a case to the Supreme Court.

**Liquor Traffic** (No. 34).—The important subject of liquor traffic is dealt with in Act No. 34, which secures much-needed reforms, and more especially in respect of the law relating to clubs. The Statute subjects all liquor licences to the control of the Licensing Court. Wholesale licences are thereby placed in practically the same position in regard to control as the retail licences; and the certificate of the Licensing Court is also a condition precedent to the issue of a club licence; and, in order to suppress "bogus"—clubs—which in certain portions of the Cape district have become prevalent—the Court is empowered to refuse renewals in cases in which the members fall below the limit of twenty-five, the club is not a *bonâ fide* one, is used mainly for drinking, is one in which excessive drinking habitually occurs, or where strangers are allowed mainly for the purpose of obtaining liquor after ordinary close time.

The Act also increases the penalty for "shebeening" and other liquor offences. The law allows wholesale dealers to supply certain quantities of liquor only, or dozens of bottles contained in "unbroken cases."

The Act declares the meaning of "unbroken case" and defines it as one containing only the same *kind* of liquor; nevertheless, it expressly allows cases of dozens of mixed wines or liquors to be sold by wholesale dealers if actually exported—as is frequently done during Christmas time—by purchasers to friends at home and abroad.

**Shop Assistants' Holidays** (No. 27). (y)—A reform of no little benefit to shop assistants is provided by Act No. 27. This is intended to render the previous law more effectual, and to prevent the small dealers—and more especially the Asiatics—from having the power of deciding whether or not there shall be a half-holiday. The means adopted are the limitation of the right to vote on the question to those shopkeepers having in their employ at least two indoor shop assistants who are not of the family of the employer. A proviso in the amended Act which, in practice, rendered the amended Act—in so far as Cape Town is concerned—abortive, is repealed, with the hoped-for result that the shop assistants of Cape Town will have the compulsory half-holiday which has been so far denied them.

**Patents** (No. 28).—The Patents Act (No. 28) is the remains of a far more comprehensive Bill designed to bring the law into line with Imperial legislation, and so to pave the way for some measure embracing the Empire within its provisions. Unfortunately the Bill could not, through pressure of time and the intricacy of its subject-matter, be passed in its entirety. The Act, however, is effectual in protecting inventors who exhibit at the projected industrial exhibition, and also provides against forfeitures to patentees who have faultlessly failed to pay their fees. It also empowers the Attorney-General to obtain assistance in the discharge of the onerous duties imposed upon him under the existing law.

**Local Works Loans** (No. 25).—This Act, in amending the Local Works Loans Act, 1882, secures the appropriation to educational purposes solely certain funds therein mentioned. It also transfers the administrative functions vested in the Commissioner of Public Works to the Colonial Secretary.

**Chinese Exclusion** (No. 37). (z)—This Act prohibits Chinamen from entering into, or residing in, the Colony, except under a certificate signed by the Governor, granted on the production of evidence, either that the applicant is by birth a British subject, or that he is the holder of a certificate of naturalisation in this Colony.

(y) See *supra*, p. 313, and repealing Act No. 34 of 1905, *infra*, p. 334.

(z) See *infra*, p. 339.

Any Chinaman who wilfully contravenes the provisions of this Act shall, on conviction, be liable to a fine not exceeding £100, or in default, to imprisonment with or without hard labour for one year, or to both fine and imprisonment.

Any certificate of exemption granted to him shall lapse.

Further, in addition to these penalties, a Chinaman may be deported from the Colony at the discretion and order of the Minister in charge.

The Act provides various penalties for assisting in the contravention of the provisions of the Act, and empowers the Governor to make regulations, to appoint officials, and to prescribe penalties to carry them out.

No Chinaman shall be registered as a voter, or take part in any election, unless he is the registered holder of a certificate of exemption.

**1905 (a)** Acts passed—50 (b): Public, 38; Private, 12.

**Franchise.**—Act No. 2 amends our Constitutional Ordinance in—to a certain extent—disfranchising members of the Imperial and Naval Forces within the Colony. In future they must have the “occupation” qualification, and will not be entitled to be registered under the “wages” qualification.

**Constitution.**—Act No. 47 removes doubt that had arisen in interpreting the provisions of our Constitution Ordinance, which prohibits the registration of “persons of alien birth, unless naturalised by some Act of Parliament of Great Britain and Ireland or the Colonial Legislature.” Subjects of the late Republics became naturalised by conquest; but not being naturalised by Act of Parliament, registration officers refused to register them. The Statute places them in exactly the same position as natural-born subjects.

**Administration of Justice.**—Act No. 9 amends the law for the better administration of justice in constituting a single judge of the Supreme Court a “quorum” for the purposes of determining appeals from the courts of resident magistrates. It further provides that in the case of an appeal from a divisional court the judge whose decision is appealed from shall not sit as a member of the Appeal Court.

**Administrative Functions of Magistrates.**—Act No. 33 confers on resident magistrates and assistant resident magistrates certain powers for the main purpose of affording additional public facilities with regard to the registration of wills, the administration of estates of insolvents and deceased persons, and the solemnisation of marriages.

**Income Tax.**—Act No. 26 re-imposes the income tax provided for

(a) Contributed by Victor Sampson, Esq., the Attorney-General of the Colony.

(b) The largest number so far passed at any one session.



last session by Act No. 36 (1904). (c) An excise duty of 6s. per gallon is levied on imported foreign spirits. This is in addition to the customs duty. The excise is not collected on importation, but is made payable upon sale to the consumer.

**Excise.**—Act No. 5 further safeguards revenue by penalising smuggling. It also empowers the Governor to refund the duty collected on materials actually used up in the construction of public works for the Imperial Government for defence purposes, and imported by the contractors.

**Loans for Local Industries.**—Act No. 43 authorises the Government to raise £900,000 (odd) for the works and services specified. £150,000 may be appropriated in granting loans to co-operative associations of wine and other farmers with a view to improving local industries and ultimately rendering the Colony self-supporting as regards farm and dairy produce.

**Railways.**—Act No. 44 authorises the raising of a loan of £191,000 for the purposes of acquiring and constructing certain railways, including one beyond the borders of the Colony within the territory of the Orange River Colony.

**Employers' Liability (No. 40).**—Among the most interesting of the public Acts is No. 40, which extends and regulates the liability of employers to make compensation for personal injuries to workmen.

The position of workmen injured in the course of their employment has always been regarded as more favourable under our common law than under English law, the doctrine of common employment being unknown to our law; but the redress was only attainable by the expensive and dilatory process of an action at law. The object of this Act is to provide a more expeditious and at the same time a certain or readily ascertainable remedy. It entitles all persons employed in any trade, business, or public undertaking within the Colony and its territorial waters (who are deemed to be "workmen" for the purposes of the Act) to compensation in respect to any personal accidental injury arising out of or in the course of their employment, if the injury necessitates absence from work for at least three days, and is not the result of any "act done or duty omitted by himself, without safeguarding against the probable consequences, when such consequences are dangerous to human life or limb" (termed throughout the Act, for the sake of brevity, "gross carelessness").

The right does not extend to domestic servants, messengers, errand boys, or those employed in agriculture, horticulture, or forestry. The right is also denied those in the military and naval services of the Crown, but attaches to other Crown employees. The natural meaning

of "workman" is, it will be observed, somewhat extended, the test being whether the claimant was employed in any "trade, business, or public undertaking." The compensation claimable is based on the "average weekly earnings" received at the time of the injury. In the case of payment by the hour, they are to be deemed to be forty-eight times the rate per hour; if the wages are paid daily, six times the rate per day; if the wages are paid monthly, one fifty-second of twelve times the monthly rate; and if paid at a rate per week, the average weekly earnings are to be taken at that rate.

Two claims are recognised by this Act in regard to an injured workman, viz. (1) In which he may receive an allowance of not exceeding 50 per cent. of his wages, as drawn at the time of the injury, during the period of his actual incapacity for work, such allowance to take effect from the date of the injury, but not to run for more than six months, and to be stopped before the expiry of that period upon the happening of certain events, such as recovery, etc. (2) In which he may receive an amount not exceeding £600 as compensation for permanent total incapacity, or £300 for partial incapacity, in calculating which sums any allowance received under the claim already referred to is to be included. The idea of these two claims was to allow a poor man means of subsistence pending the final settlement of the amount of compensation to which after full inquiry he might be found entitled.

The procedure provided is natural and simple. A general jurisdiction is conferred on the resident magistrate. On an injury being received the workman—or a person on his behalf—causes the same to be notified to a police officer or the clerk of the resident magistrate of the district, who immediately reports to the resident magistrate. The magistrate thereupon requires the district surgeon to examine the injury, and the latter certifies to the magistrate whether the workman's absence for longer than three days is necessary. On receiving the certificate the magistrate notifies the employer as to the date and place at which he will hold his inquiry. After taking evidence the magistrate—in cases in which the district surgeon certifies that the accident renders more than three days' absence from work necessary—makes a provisional order for payment of an allowance to be paid from the date of injury, and on the dates upon which the wages would ordinarily have been received. The order is made against the employer and the principals, payment by one discharging the other. The order continues in force—in the ordinary course—for six months.

An employer or principal may apply to set aside the provisional order on the ground that the notice was not served in time, on giving the workman forty-eight hours' notice.

An order may be set aside on any of the following grounds:—

- (1) That the injury did not arise out of or in the course of the employment;
- (2) That it was caused by the workman's own "gross carelessness" (as defined in the Act);
- (3) That the workman has sufficiently recovered to resume work;
- (4) That he has refused to submit to a medical examination by the doctor chosen by the employer;
- (5) That he is entitled to a similar—wholly or in part—allowance from the benefit or other society to which the employer or principal has contributed on a ratio of not less than one-third to the workman's contribution, for the benefit of his workmen.

An appeal lies to the Supreme Court only on the question of "gross carelessness."

Judgment for the full sum to be awarded finally as compensation is obtained in the Magistrate's Court, as in an ordinary civil case.

A distinct feature of this Act is a clause making it a criminal offence to cause serious bodily injury to a workman by gross carelessness, as defined in the Act, whether such injury be caused by the employer or a fellow-workman.

There are many novel features in the Act which it would take too long to describe in detail, but they combine to make the measure a great advance upon anything of the kind enacted previously.

**Education.**—Act No. 35 (*d*) is the first statutory enactment that deals seriously with the subject of education. Prior legislation authorised "grants in aid" of education. The grants have been confined mainly to "public undenominational schools," and schools receiving them have been subjected to Government regulations under which "School Committees" were established. The legal status of these committees and the legality of the regulations have been somewhat doubtful; but they have never been disputed, and they are by implication legalised by Parliament in this Statute.

The Act is intitled "An Act to provide for the establishment of School Boards or the better management of Education." The supreme authority is conferred on the Department of Public Education, under the control of the Colonial Secretary. The Act contemplates the division, within twelve months, of the whole of the Colony into a number of school districts. A school board is to be constituted for each district, two-thirds to be elected by the ratepayers, and the remainder to be appointed by the Governor. Fresh elections and nominations are to be held and made every three years. The board is empowered to found and establish new schools—which must, however, be undenominational; and they are to be provided for by the



Department. All "undenominational public schools" existing at the date of the Act, all State-aided private farm schools, and existing poor schools are eventually—and at latest within three years—to be placed under the control of the district school board.

The school board exercises financial control, fixes salaries and school fees, and provides buildings.

A school committee for each school is to be elected by the parents resident within the district who are owners or occupiers of property therein, and having one or more children on the school's roll.

The school committees are under the control of the school board. They are intended to exercise general supervision of the buildings and grounds, to advise the board generally on matters involving the welfare of the school, to recommend teachers for appointment, and to advise on the question of their suspension, as well as to deal with complaints and suggestions of parents.

The Act imposes on boards the duty of seeing that all European children over seven are being educated—at school or privately. If it is found that a child is, through the poverty of its parents, not being educated, the board is to provide its education at the public cost.

Compulsory school attendance or education privately is not required after the fourteenth year. The only children exempted from school attendance are children educated privately, those living more than three miles from the nearest European school, and those suffering from ill-health.

Employment of European children under fourteen during school hours is prohibited.

The education of coloured children is not generally compulsory; but in any district where there is an undenominational public school and sufficient accommodation, the school board, with the approval of a majority of ratepayers, may make school attendance of coloured children compulsory.

Local authorities (town councils and divisional councils) are enabled to make grants in aid of education.

**Copyright: Fine Arts.**—Act No. 46 provides for copyright in certain works of art, viz. paintings, drawings and the designs thereof, photographs and the negatives thereof, and any positives or copies made therefrom, engravings and sculpture.

"Copyright" is defined as the "sole and exclusive right of copying, reproducing, repeating, or otherwise multiplying copies of any work of art and of the designs thereof, of any size, in the same or any other material, or by the same or any other kind of arts."

Where the work is made by an employee in virtue of his employment his employer is deemed to be the author entitled to the copyright.

Where the work is executed for another person for valuable consideration the copyright is not retained by the author unless it is expressly reserved to him by agreement in writing.

The same rule applies to sales for the first time after the passing of the Act.

The term of copyright is as follows: Paintings and sculpture—life and thirty years after death; engravings (not published in or forming part of a book) and photographs—thirty years after the end of the year in which they are sold or delivered for registration.

The Act does not prejudice the right of any person to represent any scene or object in respect of some representation of which there may be copyright, or the right to copy any work not copyrighted.

The Act provides for the appointment of a Registrar and a Register of Copyrights. There must be registered, *inter alia*, a short description of the nature and subject of the work; the registration of a sketch or photograph is optional.

The fee for photographs is 1s., and for the bioscope films 1s. per hundred.

The Act prohibits the public exhibition of a person's photograph or painting without his consent.

The penalties generally are much the same as in England.

**Imprisonment of Women and Young Persons (Act No. 4).**—The object of this Act is to prevent young persons and women awaiting trial, and juvenile offenders pending apprenticeship or removal to a reformatory, being subjected to the contamination of gaols.

It provides that such persons may be detained in such places other than gaols as may be appointed therefor by the Governor. It also empowers the Governor to commute a sentence of imprisonment against any woman to compulsory residence—not exceeding the unexpired portion of her sentence—at a “rescue home.” In the working of this Act the Salvation Army has already rendered valuable assistance.

**Recovery of Small Debts.**—Act No. 15 is intended to facilitate the recovery of small debts in a manner calculated to save unnecessary expense as well to the creditor as to the debtor. The magistrates of this Colony have always enjoyed very extensive civil jurisdiction, nearly equalling that of county court judges in England; but our law provided nothing like the expeditious procedure available at home for the recovery of small debts. This Act, like the Workmen's Compensation Act, is drafted on quite independent lines. It is confined to the recovery of sums not exceeding £20 claimed in respect of goods sold, money lent, work done, use and occupation, and unconditional acknowledgment of debt. A written demand must first be sent to the debtor, and a copy filed with the clerk of the Magistrate's Court in the

defendant's district. A summons must then be applied for in that Court by the creditor personally. Particulars are thereupon entered in the Civil Record Book, and the number of days within which appearance is to be entered by the defendant or his agent is specified in the summons, the period to be determined reasonably, having regard to the locality of the defendant's residence and its distance from the court-house.

If, after service, appearance is not entered personally or by notice in writing within two days after the expiration of the period so limited, the case is to be set down for hearing at the next sitting of the Court, when if the service has been personal on the debtor, the Court may give final judgment without requiring any evidence: if the service has not been personal, provisional judgment is to be given, upon which execution issues on the plaintiff furnishing security for the full restitution of the amount levied, should the judgment be reversed. The debtor may, within a month, apply to the Court for review on the ground that it was through his *bonâ fide* absence that service was not effected upon him personally. If the appearance is entered timeously the case is dealt with in the usual manner.

**Shop Assistants' Half-holiday.**—Act No. 34(e) secures for shop assistants throughout the Colony a half-holiday. It is the result of prior legislation failing in its object, mainly through the difficulty experienced in "classifying" shops, and the mutual jealousies of the smaller retailers. A half-holiday is rendered compulsory and is not dependent upon local option or the wishes of the employers. The closing day is generally that selected by the majority of shopkeepers, every shopkeeper being required, within one month of the date of the Act, to notify to the local authority the day chosen by him as the half-holiday; but in Cape Town, Kimberley, Beaconsfield, Port Elizabeth, King William's Town, and East London the day must be Saturday or Thursday; if a shopkeeper fails within the time limited to elect, he must close on Saturday.

The attainment of the object of the Act is secured by prohibiting under penalty the employment, whether consented to or not, of shop assistants during the closing hours.

The Act applies to all "places set apart for the sale of goods by retail or by auction," but does not apply to places set apart for the sale of medicines and drugs, refreshments or intoxicating liquor. Each assistant, however, in chemists' shops, restaurants, bars, hotels, etc., must have one half-holiday in each week assigned to him as mutually arranged.

**Crimping.**—Act No. 18 amends our law relating to merchant shipping.

(e) See *supra*, p. 327.



and applies the Imperial law relating to the licensing of seamen's lodging-houses, licences to supply seamen and apprentices, the protection of seamen from imposition, the enticing of seamen to desert, and the harbouring of deserters.

**Youths Smoking.**—Act No. 24 prohibits the supply of cigarettes and tobacco to youths under sixteen years. It does not render the youth liable to punishment, but the dealer offending is subjected to a fine not exceeding £5, or in default to imprisonment for not exceeding one month. Masters and teachers in schools are empowered to seize tobacco, cigarettes, and the like in the possession of boys under the age fixed, and the use of tobacco is constituted an "offence against school discipline."

**Railway Passenger Traffic.**—Act No. 6 is aimed against those who defraud the Government Railways by travelling without tickets. To be "without a ticket" is not constituted an offence—if there is reasonable excuse—but the traveller, in addition to paying the fare for the "journey contemplated or completed," is liable to pay a fine—termed a booking fee—at the rate of 10 per cent. on the fare payable, which is collected immediately.

If a person is unable to produce his season or other ticket on demand, the fare and booking fee must be paid, but the fare may be refunded if, within fourteen days, he satisfies the Department that he was the holder of a ticket, lost or mislaid.

**Wild-flowers Protection.**—Act No. 16 has for its object the protection of the heath, orchids, and other wild-flowers more or less peculiar to the Cape, and whose extermination is threatened by the indiscriminate pulling-up of bulbs by natives for the purpose of sale. It empowers the Governor by Proclamation to prohibit the gathering in Crown lands, and private lands without the owner's consent, of the bulbs and flowers from time to time specified by him.

**Vermin-proof Fences.**—Act No. 42 enacts that where the owner of land erects a vermin-proof fence which is also beneficial to the neighbouring landowner, the latter must contribute towards the cost of erection—the amount to be settled by agreement or arbitration.

Act No. 22 empowers inspectors of native locations to call upon the residents to assist in the eradication of burr-weed and other noxious plants in the location lands.

**Insect Pests.**—Act No. 29 aims at checking the dissemination of insect pests and plant diseases from nurseries. It provides for the compulsory registration and inspection of nurseries with the power of placing them under quarantine.

**Criminal Law: Thefts of Produce.**—Act No. 7 empowers a magistrate sentencing an offender for theft of stock or produce at the same time to

impose in addition to the ordinary penalty a fine—when the subject-matter of the theft has not been recovered or when it has considerably deteriorated in value—not exceeding its full market value, with alternate imprisonment if the fine is not paid.

1906 (*f*)

Acts passed—42.

**Control and Audit** (No. 14).—This Act consolidates and amends the law relating to the control and audit of public accounts and the protection and recovery of public property. Generally the principles upon which the Act is drafted are identical with those upon which the Acts of the Commonwealth (*g*) and New South Wales (*g*<sup>1</sup>) are based.

**Revenue and Expenditure** (Nos. 9, 1).—The Income Tax is reimposed by Act No. 9, and Act No. 1 ratifies the Customs Union Convention and Protocols entered into at Pietermaritzburg on March 24, 1906, the parties to which are the Cape, Natal, Orange River Colony, Transvaal, and Southern Rhodesia. It will be observed that there is a slight increase in the duties on the “necessaries of life.” Rebate is granted upon goods the growth, produce, or manufacture of the United Kingdom or a reciprocating British Colony.

The following are examples:—

ARTICLE.	DUTY.	REBATE.
Butter (per lb.) . . . .	2½ <i>d.</i>	¼ <i>d.</i>
Cocoa (per lb.) . . . .	2 <i>d.</i>	½ <i>d.</i>
Confectionery (per lb.) . . . .	2½ <i>d.</i>	¼ <i>d.</i>
Wheat (100 lb.) . . . .	1 <i>s.</i> 2 <i>d.</i>	2 <i>d.</i>
„ ground (100 lb.) . . . .	2 <i>s.</i> 6 <i>d.</i>	3 <i>d.</i>
Barley (100 lb.) . . . .	2 <i>s.</i>	2 <i>d.</i>
„ ground (100 lb.) . . . .	2 <i>s.</i> 9 <i>d.</i>	3 <i>d.</i>
Milk, condensed full cream (100 lb.)	5 <i>s.</i> 2 <i>d.</i>	1 <i>s.</i>
Potatoes (100 lb.) . . . .	2 <i>s.</i>	2 <i>d.</i>

On animals imported for slaughter the following duties are charged:—

Cattle, £1 10*s.* each; sheep, 5*s.* each. Upon meat and lard is charged 1½*d.* per lb., and upon butter 2½*d.* per lb. The duty on animals imported for slaughter and meat cannot be suspended by the Governor without the consent of both Houses of Parliament. The Act prohibits the importation of prison or penitentiary-made goods. The importation of opium, its extracts, poppies, and preparation of poppies by other than doctors and chemists is penalised. The object is to prevent the importation of opium by the Chinese and others for smoking purposes.

(*f*) Contributed by Victor Sampson, Esq., Attorney-General.

(*g*) See *supra*, vol. i. p. 404.

(*g*<sup>1</sup>) See *supra*, vol. i. p. 440.

S. 22 of the Act penalises the importation of indecent books, pictures, etc.

**Administration of Justice: *The Rebellion*.**—Act No. 29 completely reinstates those convicted of treason during the late war and rebellion, and who had been deprived of certain rights of citizenship; and henceforth no prosecution will be instituted in connection with any act committed by any person in his capacity as a rebel in arms (ss. 8, 9, 10).

**Supreme Court** (No. 29).—The Supreme Court may now sit in three instead of only two divisions (s. 1).

**High Court, Griqualand** (No. 29).—After July 1, 1907, the High Court of Griqualand will consist of one judge only, and the Judge-President will retire on full pension.

**The Transkei** (No. 29).—S. 11 empowers the Chief Magistrate of the Transkei Native Territories to hear and determine suits of divorce and judicial separation.

**First Offenders** (No. 11) is a continuation of the legislation of last session the object of which is the ultimate prevention of crime and reformation of convicts. The Act empowers the Court to “bind over a first offender” on the ground of youth, character, and antecedents, the trivial nature of the charge, or the extenuating attendant circumstances. The Court is further empowered to discharge a first offender with a reprimand without imposing any sentence of fine or imprisonment. These powers, however, are not exercisable when the crime charged is a capital one.

**Lashes**.—Act No. 19 takes away the arbitrary power of magistrates visiting convicts and prisoners to sentence prisoners to lashes not exceeding fifteen. In future all sentences to lashes—independently of their number—must be confirmed by a judge on review.

The following Acts are of peculiar interest to others than residents within the Colony:—

**Immigration**.—Act No. 30 amends the Immigration Law, and repeals the Statute of 1902. (*h*) The following classes of persons are now prohibited—unless exempted from the application of the Act—from entering the Colony by land or sea:—(a) Persons unable through deficient education to write out in a European language an application for admission into the Colony. In the interpretation of the words “European language” some doubt was experienced under the repealed Act as to the inclusion of “Yiddish.” This Act removes the doubt by specifically accepting Yiddish as a European language; (b) persons not in possession of visible means of support, or likely to become a public charge; (c) persons deemed by the Minister (*i.e.* the Colonial Secretary) to be

(*h*) See *supra*, p. 319.



undesirable by reason of their having been convicted of any infamous crime, such as murder, rape, theft, fraud, perjury, forgery; (d) lunatics; (e) prostitutes and those living wholly or in part on their earnings; (f) persons deemed by the Minister to be undesirable by reason of information received from a Secretary of State, Colonial Minister, or through diplomatic channels.

The Act wholly exempts the following persons from its application; (a) persons born in South Africa; (b) his Majesty's naval and military forces; (c) officers and crew of foreign public ships; (d) Consuls and their families; (e) wives and children under sixteen of persons not prohibited.

Persons of European birth "domiciled" in South Africa are partly exempted; they may return unless they have been convicted of any serious crime, or are prostitutes or persons living on the proceeds of prostitution.

Ex-War-volunteers are relieved from the "means" and "education" test, but are subjected to the others—(c), (d) and (f).

An Asiatic resident in the Colony is allowed to depart and return if he absents himself under a Minister's permit. European agricultural or domestic servants, skilled artisans, mechanics, workmen, miners, are wholly exempted if they immigrate under a scheme approved by the Government, and possess certificates granted by the Agent-General in England, or the officers appointed by the Governor elsewhere, certifying that they are actually engaged for immediate and desirable service in the Colony.

Persons flying from political or religious persecution are allowed to enter the Colony though not possessed of visible means of support; but in other respects they must satisfy the tests (a), (c), (d) and (f).

The main reforms attained are therefore—(1) the exemption from all tests of persons born in South Africa; (2) the confining of the "domicile" exemption to Europeans who are not criminals or connected with the social evil; (3) confining the "war service" exemption to volunteers, and to such as are of good character.

Under the repealed Act certain undesirable foreigners endeavoured to enter and re-enter the Colony. The Crown asserted the prerogative of prohibiting any "foreigners" from entering the Colony. The prerogative was upheld by the Court, and it was held—in the various cases—that (a) the Act did not affect the prerogative of the Crown with regard to the exclusion of "aliens"; (b) that an "alien" could be excluded even though he had acquired a domicile in the Colony. The exclusion was not, in any of the cases, arbitrary. The persons excluded were undesirable, as being closely connected with the trade of prostitution. The Act must therefore be regarded as applying to

immigration generally, and it will not entitle an "alien" to enter the Colony against the wishes of the Executive.

Under the repealed Act no penalty was imposed upon an immigrant unlawfully entering the Colony; the new Act attaches a penalty of £50 or three months, in addition to liability to be sent away at any time.

The master of a ship who "knowingly, directly, or indirectly allows any immigrant to leave his ship, whereby such immigrant contravenes" the Act, and the owners are rendered jointly and severally liable to a penalty of £100, and to a further penalty of £20 for each immigrant landed exceeding five.

The Governor has the following powers:—

(1) To approve of schemes for the immigration of servants, artisans, and skilled workmen; but the Act clearly indicates the intention that no scheme should be approved unless the Governor is satisfied that there is an insufficient supply of the class of labour in the Colony at an adequate remuneration.

(2) To issue regulations in respect of the following matters:—(a) The prevention of unlawful immigration; (b) the expulsion of prohibited immigrants; (c) the temporary custody and control of prohibited persons pending their expulsion; (d) the reception, etc., of persons immigrating under approved schemes; (e) the appointment of officers to carry out the regulations; (f) the issue of certificates and other documents, and the payment of fees therefor; (g) the passage of prohibited immigrants through the Colony, or for their temporary residence, with power to require security to ensure the "time" conditions being complied with.

**Chinese Immigration (No. 15).**—This Act enables Chinamen resident in the Colony who are not British subjects to temporarily absent themselves from the Colony. Under the Act of 1904<sup>(i)</sup> an "alien" Chinaman leaving the Colony could not return. This constituted an undoubted hardship, especially when Chinamen had property or families living abroad.

**Marriage (No. 11).**—This Act provides that, in cases in which banns of marriage "shall have been lawfully published in different places, both of which shall be in this Colony, or one of which shall be in this Colony and the other in another country, or each of which shall be in another country or other countries respectively," it shall be lawful for the officiating minister in this Colony, upon production to him of the certificates of the due publication of the banns, to solemnize the marriage between the parties whose banns have been so duly published notwithstanding anything to the contrary in the Marriage Order in Council of September 7, 1838.

(i) See *supra*, p. 327.

**Companies** (No. 8).—This enables a Colonial company transacting business outside the Colony to issue duplicate seals to be used abroad by its agent, duly authorised thereto in writing, under the Company's Common Seal. The powers cannot, however, be exercised if not authorised by the Articles, or a special resolution of the company.

**Public Health** (No. 42).—*Wine and Brandy*.—From the public health point of view this Act and the Slaughter-Houses Act are perhaps the most important Acts of the session. The object of the Act is to restrict the supply of wines and spirits, as far as possible, to the pure article. In the case of "wines" the Act defines what alone shall be regarded as "pure" or "natural" wines; and no wine may, in future, be imported or manufactured for sale within the Colony as pure or natural wine which does not satisfy the requirements of the Act. The Act goes further in prohibiting the sale as such of any "wine" which is not wine properly so called. An article sold as "wine" must be the product solely of the alcoholic fermentation of the juice (must) of fresh grapes.

Sweet wine must be "wine" sweetened only by the sugar derived from the juice (must) of the fresh grape from which it is made.

"Sparkling wine" must be "wine" surcharged with carbonic acid gas to which cane sugar and "pure wine" spirit (the rectified distillate resulting from the distillation solely of wine or must) may or may not have been added.

The description "champagne" must not be applied to any wine in which the excess of carbonic acid gas results from direct admixture (s. 13).

No "wine" may be sold as such if any water has been added to it (s. 8) or to which has been added:—

Cane sugar in quantities exceeding eight ounces per gallon; salicylic acid exceeding four ounces per 127 gallons; sulphurous oxide exceeding, in "dry" wines, fourteen grains of free and combined sulphurous oxide, or one and a half grains of free sulphurous oxide per gallon; and in the case of other wines, exceeding twenty-five grains of the free and combined, and two and a half grains of the free per gallon. ("Dry" wine is defined as wine in which all the sugar derived from the juice or must is completely fermented.)

Wine may not be sold as "pure wine," or "natural wine," or "pure natural wine," or "natural dry wine," or "pure natural dry wine," or "pure natural sweet wine" unless, in addition to being "wine" properly so called and satisfying the above-mentioned requirements as to "wine," it is also free from what the Act condemns as "foreign substances." On this subject the Act (s. 7) provides as follows:—



(7) The terms "foreign substance" used in this Act (a) Shall include the following, and such others as the Governor in Council, on recommendation of the Administering Officer, may by regulation from time to time declare and publish in the *Government Gazette* as foreign substances, for the purposes of this section, viz.: Ethers, essential oils, bitter almond, cherry laurel, flavouring substances, alkaloidal substances, compounds of barium, fluorine, magnesium, strontium, bismuth, arsenic, lead, zinc, aluminium, tin, copper, boron, derivatives of naphthol (abraxol, etc.), sulphuric acid, formalin or formaldehyde, salicylic acid, or other antiseptics (except sulphurous oxide as provided for in s. 8), glycerine, saccharine, dulcine, sucrovin, starch sugar, invert sugar, cane sugar (except in the case of champagne), impure spirit containing more than one per mille of fusel oil, organic or mineral colouring matters, gums, and any mixture containing any of these substances; but (b) Shall not include the following and such others as the Governor in Council, on the recommendation of the Administering Officer, may by regulation from time to time declare and publish in the *Government Gazette*: (1) Yeast or leaven. (2) Substances such as isinglass, gelatin, eggs, albumen, Spanish clay, kaolin, or tannin for the purpose of clarification. (3) Common salt, provided that the total amount of chlorine in the wine, calculated as sodium chloride, does not exceed half a gramme per litre, or thirty-five grains per gallon. (4) Sulphate of lime, metabisulphate of potassium or sulphurous oxide, provided that the total amount of sulphuric oxide calculated as potassium sulphate does not exceed two grammes per litre or one hundred and forty grains per gallon. (5) Tartaric acid. (6) Natural products of grape-vine leaves or flowers. (7) Pure wine spirit, pure wine brandy or spirit distilled from sound wine at not less than thirty-eight degrees over proof, for the purpose of increasing the alcoholic strength to the extent not exceeding twenty-eight per centum of proof spirit, or sixteen per centum of alcohol by volume in the case of dry wines, or thirty-five per centum of proof spirit or twenty per centum of alcohol by volume in the case of sherries, ports, and sweet wines, or forty-three per centum of proof spirit, or twenty-five per centum of alcohol in the case of imported wines, alcohol in either case being absolute alcohol of specified gravity 0.7938 and measured at the temperature of sixty degrees of Fahrenheit's thermometer.

*Brandy and Whisky.*—No article may be sold as brandy which is not the distillate resulting from the distillation of (a) wine or must; (b) must and grape-husks; (c) grape-husks and water.

No article may be sold as whisky which is not the spirituous liquor derived from grain by fermentation and distillation, the volatile constituents of which are derived solely from that material.

The strength of brandy and whisky may be reduced by means of pure water to not below 25° under proof.

An article sold as "pure wine brandy" must be distilled from "pure wine," or "must"; "pure grape brandy" must be distilled from "wine,"

or "must with grape-husks": "dop brandy" from "grape-husks and water," and, in each case, from these substances solely.

"Malt whisky" must be derived solely from malt, and "blended whisky" must contain not less than 25 per cent. of malt whisky.

All Colonial brandy must be sold in vessels with labels stating clearly whether the brandy is "pure wine brandy," "pure grape brandy," or "dop brandy."

Every bottle of wine, brandy, whisky, and liqueur must be labelled with the name and address of the retailer, and if bottled in the Colony with the name and address of the bottler as well, and if imported with the name and address of the original importer.

Existing stocks are to be inspected, and a reasonable time allowed for their disposal.

The Act will apply to all future importation of wines and spirits, and all imported wines and spirits will be subjected to the provisions of the Act.

**Slaughter-houses** (No. 27).—The object of this Act is to prohibit, as far as possible, the slaughter of cattle and other animals for human consumption in places other than public slaughter-houses properly regulated from the point of view of public health. The necessary powers are conferred on local authorities, and on failure to exercise them the Government is empowered to intervene in certain defined and populous areas, and provide the necessary accommodation at the expense of the authority.

Local authorities are empowered to make regulations—with, of course, the Governor's assent—prohibiting the sale of meat brought within the area that has been condemned by their inspectors.

**Servants' Registry Offices** (No. 20).—This Act is aimed against undesirable registry offices, and also against undesirable domestic servants.

In future no person may keep a servants' registry office unless licensed by the resident magistrate; and licences are only to be granted applicants who produce certificates as to good character, signed by a justice of the peace—to whom applicant is personally known—and six local ratepayers. In spite of the production of such a certificate, the magistrate may make further inquiry and call witnesses; and the Act intimates clearly that he should not grant the licence unless satisfied, not only as to the applicant's character, but also as to the fitness of the proposed premises upon which alone the business may be carried on.

A licence may be transferred, but similar tests are applied to the transferee, and the business cannot be transferred to new premises.

The Act requires the office-keeper (1) to keep a book recording names of all persons charged or paying fees, with particulars of the amounts and dates; (2) to keep a book styled "Book of Engagements,"

recording in each case the following particulars: Name and address of servant; name and address of applicant applying for servant; name of last employer and last known address; date of application; date of engagement; address and occupation; nature of engagement; rate of wages; terms of engagement; signature of office-keeper; (3) to file—available for one year—originals of all letters relating to hirings; (4) to keep conspicuously posted the scale of charges; (5) to charge only in accordance with the posted scale.

A maximum scale of fees may be prescribed by the Governor by regulation.

The Act includes, among servants, governesses and lady-helps, and any person hired in any capacity, whether domestic, agricultural, pastoral, mechanical, or otherwise.

The Act does not apply to institutions not carried on for the purpose of gain.

Servants are required by the Act, when seeking hire through an office, to truly state: (1) Name; (2) address; (3) name and address of last employer, and any false information is punishable by a fine not exceeding £5, or imprisonment up to fourteen days.

The magistrate is required to keep a register of all licences and transfers.

The police are empowered to inspect the books, and an employer may inspect entries which concern him.

Persons keeping registry offices without a licence are punishable by a fine not exceeding £5, and the like penalty is imposed on a licensed holder for any contravention of the Act.

**General Dealers (No. 35).**—Under the general law a person cannot carry on the trade of a general dealer unless he has taken out a general dealer's licence, which costs £3 annually. Latterly there has grown up in the Colony a class of tradesmen—recruited from undesirable immigrants—who have in a great measure constituted a menace to the public health. They set up small wood or iron structures, and sell goods on premises which are practically their habitations. The object of this Act is to confine the exercise of the trade to persons who have the necessary accommodation, and are otherwise capable of catering for the public with more or less safety, as regards the public health. The Act will confine, in future, the issue of licences to persons who are approved of by the local authorities within whose jurisdictions respectively they desire to do business; and if a majority of two-thirds of the whole of the members of any local authority objects to any applicant, he will not be allowed to carry on the business within the jurisdiction of the local authority, or within three miles of its boundary.

The Act is not retrospective in so far as the holders of existing



licences are concerned, and as long as they do business within the same areas.

Similar provisions, more or less, apply to hawkers.

The Act further penalises Sunday trading and shebeening by a possible cancellation of the general dealer's licence held, and disqualification to hold another for one year.

An important reform in the general law is attained by enabling the local authority to control the hours of "keeping open." Their regulations may apply generally, or be restricted to particular classes of shops. In specifically prohibiting the keeping open on Sundays, and other closing days, any shop in which a general dealer's goods are kept for sale, the Act prevents general dealers' shops being open on the pretext that refreshments are being sold.

The fee for a hawker's licence is fixed at £2 in municipalities and villages, and £3 elsewhere.

**Education (No. 25).** (*k*)—This Act amends the Act of last year with regard to elections of school boards, in more clearly defining the persons entitled to vote. No person may vote unless his name appears on the Divisional Council Voters' Roll. In this way the difficulty experienced in the past in determining what constitutes a municipal divisional council "ratepayer" is overcome.

The Act extends the franchise to women who are occupiers of immovable property, and certain elections held under the amended Act which could, but have not been, judicially set aside on the ground that certain persons were excluded from voting, are validated.

**Partnerships Limited Liability (No. 12).**—Act No. 24 of 1861—which excludes from its operation joint-stock companies and banks—provides for the formation of "limited" partnerships consisting of—

(1) General partners, liable jointly and severally, authorised only to transact business and sign for the partnership and bind the same; and

(2) Special partners, each contributing to the common stock in actual cash a specific sum of money, but not liable, generally, for partnership debts beyond the amount so paid in.

This new No. 12 Act requires that all such partnerships shall bear after their name the word "Registered," in order that the limitation of the special partners may be made public, and creditors may be thereby protected.

**Trespassing (No. 23).**—S. 1 of the Act makes it penal for any person to "trespass or be within any enclosed camp, kraal, or land without the permission of the owner or lessee."

S. 3 penalises the "visiting" of servants on the master's premises without his consent, in cases in which the master has generally

(*k*) See *supra*, p. 331.

prohibited visiting. The Governor may apply these provisions to lands appropriated for railway purposes.

*Wild Animals.*—The Act declares that all game or wild animals preserved or enclosed by any owner or lessee within any camp or kraal shall be deemed to be the property of such owner or lessee as long as they remain in such enclosure.

S. 6 provides a penalty for cutting or damaging wire or other fences. Prosecutors may withdraw any charge made under this Act.

**Irrigation** (No. 32).—This Act is regarded by many as one of the most important of the session. It consolidates (*l*) and amends the somewhat complicated laws relating to irrigation and the utilisation of streams. Its provisions are of interest mainly to the inhabitants of those countries which, like South Africa, have an insufficient number of perennial streams, and where agriculture must to a great extent depend upon water stored during the rainy seasons. The Act provides for the establishment of river districts and boards, and irrigation districts and boards. The object of the former is a combined system of control by the riparian owners of the streams in the district, and the distribution of the water. In irrigation districts the boards are intended to construct irrigation works and control their user and the distribution of the water.

The Act further provides for the constitution of Water Courts for the purpose of hearing and determining all disputes in connection with the use and appropriation of water, recourse to which is, in the first instance, compulsory. An appeal lies to the Supreme Court; but the parties may agree that the Water Court's decision shall be final.

**Animals Diseases** (No. 16).—This Act confers upon the Government further powers in order to combat the diseases of lung-sickness, glanders, farcy, and tuberculosis.

**Ordinance** (No. 7).—This Act substitutes the General or other officer commanding in the Colony for the Commanding Royal Engineer for the purpose of dealing with ordinance property under Act No. 2 of 1858.

**Outspans** (No. 13). (*m*)—This Act empowers the Governor to reserve Crown lands for use as public outspans; to reserve, with the consent of the divisional council, such portions of public outspans as may be required for public purposes, and to consent to the leasing, by divisional councils, of outspans in exchange for lands more suitable for outspan purposes.

**Private Bills** (No. 3).—This Act empowers the President of the Legislative Council and the Speaker to appoint a civil servant to be the depositary and custodian of all documents required to be deposited in connection with private Bills.

(*l*) *Inter alia*, No. 40 of 1899 (see *supra*, p. 313), is repealed.

(*m*) See *supra*, p. 319.

**Local Authorities Railway Contribution (No. 33).**—This Act enables local authorities to make contributions to the Government in aid of the construction or maintenance of Government railways or in consideration of the furnishing of special facilities. The idea is, mainly, to allow local authorities who will be the main gainers by the construction of a line to levy special rates in order to enable the Government to work the line with as little loss as possible.

**Railway Construction (No. 34).**—This Act empowers the construction of a number of lines of railway—set out in the Schedules to the Act. It empowers the Governor to expropriate the line from Mafeking to Burman's Drift Siding, and to enter into a Convention with Natal for the construction by the Natal Government of a line from Riverside to the Natal Border with the right of expropriation by the Cape Government.

**Employers' Liability (No. 40).**—This Act provides that, in assessing the amount of compensation to be awarded to workmen or their dependents, no account is to be taken of moneys derivable from any benefit society, life assurance company, or savings bank. When, however, the employer has contributed, his rights under the principal Act—No. 40 of 1905—are saved.

## 1907 (n)

Acts passed—29.

**Infant Life Protection.**—No. 4 follows the usual lines in requiring notice to the local authority in regard to any child under seven nursed or maintained apart from his or her parents for a period longer than three days. Inspectors are appointed to secure the administration of the Act. Insurance is forbidden. Magistrates may fix the number of children who may be received in any dwelling.

**Savings Banks.**—Besides making various amendments in the principal Act of 1889, No. 5 authorises the Postmaster General to enter into an arrangement to transfer sums from the Post Office Savings Bank in the United Kingdom to the Post Office Savings Bank in the Colony, and *vice versa*.

**Trustees.**—The object of No. 7 is to provide for the recognition in the Colony of trustees and liquidators appointed elsewhere in British South Africa. The trustee or liquidator is required to produce his letters of appointment to the Court and fix a place within its jurisdiction at which any process under the Act may be served upon him. The effect of recognition by the Court is—

to empower the non-Cape trustee or liquidator to administer and realise for the purpose of the bankruptcy, insolvency or winding up, as the case



might be—and to effect valid delivery or transfer of all the assets in this Colony of the bankrupt insolvent, or company, whether movable or immovable [subject to the conditions stated in the Act].

The non-Cape trustee is to give security for the administration of assets in the Colony and due compliance with the law.

**Wine.**—In order to encourage the sale of pure natural wine, No. 8 enacts that no licence need to be paid by the maker provided that it is the product of wines of his own growth, and that the liquor is made upon his own property or some central cellar belonging to him.

**Ostriches.**—The export of ostriches and ostrich eggs is forbidden by No. 10, provided that the prohibition shall not apply to the export to any neighbouring Colony or State which shall, by its own Legislature, have also imposed a penalty of not less than twelve months' imprisonment as contained in the Cape Act.

**Meat Trade Monopoly.**—The preamble to No. 15 sets forth—

Whereas it appears that within recent years certain persons have formed combinations for regulating the meat trade in order to secure larger profits, and whereas the effect of such combinations is prejudicial to the public interest—

it is desirable to provide by law against such combinations.

Butchers must have a licence to sell meat, for which the fee is £5 if South African-grown, £10 for other than South African-grown meat.

Every act, contract, combination or conspiracy in unreasonable restraint of the trade of a butcher is hereby declared to be illegal.

The maximum penalty is £500 or imprisonment for twelve months with or without hard labour. Intimidation with a view to defeating the purpose of the Act is punishable by a penalty not exceeding £100 or imprisonment with or without hard labour for six months.

All contracts and undertakings in support of any combination the object of which is to secure the control of the sale of meat, so as to enable such combination to arbitrarily control or regulate the price thereof, shall be held to be illegal and void.

The Act only applies to districts in which it is proclaimed by the Governor to be in force after representations from the local authorities.

**Mines.**—Part I. of No. 16 makes various amendments in the mining laws as to reef diggings. The Governor is authorised to grant leases for the purpose of dredging in any public waters for precious minerals. Part II deals with base minerals, meaning asbestos, building stone, cinnabar, clay, coal, cobalt, copper, goadilite, gypsum, iron, lead, manganese, magnesite, nickel, natural gas, oil, salt, slate, tin, and such other minerals, not gold, silver, or platinum, as the Governor may from time

to time declare to be base minerals. A licence is required to prospect on Crown lands for base minerals. Any person who places minerals in the ground with a view to a false declaration as to its suitability for working is guilty of a form of fraud known as "salting." The onus of proof lies upon the offender. Part III. of the Act deals with assays of mineral ore by a Government analyst under the Mines Department.

**Noxious Weeds.**—No. 17 strengthens the powers of local authorities for the eradication of noxious weeds and plants.

**Fertilisers and Food Stuffs.**—The sale of fertilisers, farm foods, seeds, and pest remedies is regulated by No. 20, superseding the provisions of the Food and Drugs Act, 1890.

**Carrier Pigeons.**—No. 20 has for its object the protection of certain birds known as homing pigeons by imposing penalties upon any one who kills or injures them. But to obtain the benefits of the Act the owners must be registered. The effect of registration is also to place the pigeons at the service of the Government when the exigencies of the public service may require the same.

**Agricultural Bank.**—By No. 25 a bank is established for the purpose of assisting the occupation, cultivation and improvement of agricultural and pastoral lands. Advances may be made: (1) to pay off existing liabilities in cases in which the board approves of an advance for improvements; (2) to effect improvements, including, (i.) water storing and irrigation; (ii.) fencing; (iii.) cleaning land for cultivation; (iv.) planting of orchards and vineyards; (v.) farm buildings, and (vi.) for purchase of stock and plants.

**Income Tax.**—Incomes above £10,000 pay a tax of one shilling and threepence in the pound, and above £20,000 of one shilling and sixpence, by No. 26, amending the Additional Taxation Act, 1904. (o) Mining companies earning profits in excess of £50,000 per annum are taxed at the rate of £10 per cent. of such profits.

**Precious Stones.**—By amendments to the Precious Stones Act, 1899, (p) No. 27 makes provision for the rights of the discoverer, the Crown, and the owner; the working of a mine. Part II. deals with alluvial diggings, and Part III. with the granting of licences for dredging for precious stones similar to the terms of No. 16. (q)

(o) See *supra*, pp. 323–326.

(p) See *supra*, p. 312.

(q) See *supra*, p. 347.

## 2. NATAL.<sup>(a)</sup>

1898<sup>(b)</sup>

Acts passed—1 and 50.<sup>(c)</sup>

**Zululand.**—No. 37 enables the Governor of Natal by proclamation to annex the territory of Zululand, which is henceforth to be the Province of Zululand. Laws in force in the territory are continued, except as expressly varied by this Act or by later Natal legislation. All persons living in Zululand who, if in Natal, would enjoy franchise rights are declared entitled thereto. The exercise of the rights is postponed till the necessary provision has been made by Parliament; but the Governor is to submit a Bill for such person next session. The Governor is empowered to apply to Zululand the Natal laws as to police, customs and excise, audit, post and telegraph, and registry of deeds; and up to June 30, 1898, to vary the laws of Zululand by proclamation not inconsistently with the Act. The Crown Prosecutor of Zululand is to be subject to the Attorney-General of Natal; but the Supreme Court of Natal is not to exercise jurisdiction in the province except in accordance with later Acts. Her Majesty's engagements with native chiefs are to be performed by the Governor; and no alteration in the law as to the supply of intoxicating liquors to natives or any other classes under restrictions in regard to liquor is to be deemed to be effected by the passing of the Act. Until other provisions are made, no alienations of Crown lands shall be made, nor shall the natives be disturbed in occupation; but the section does not apply to township lands or lands reserved, or which may be reserved, for mining within Proclamation VII. (April 16, 1894), or to rights already acquired from the Zululand Government. No charge is to be made for passes authorising natives to enter Natal from Zululand, and *vice versa*. The Governor's salary is increased from £4000 to £5000.

No. 10 increases the Legislative Council of Natal from eleven to twelve members, and the Legislative Assembly from thirty-seven to

(a) A Revised Edition of the Statutes, 1845-1899, edited by R. L. Hitchins, was published in 1900.

(b) Contributed by Israel Davis, Esq.

(c) In the first session of the second Parliament one (printed) Act was passed (December 29, 1897); in the second session fifty Acts were passed (January 10, 1898, to December 12, 1898).



thirty-nine; makes Zululand a district for the purposes of the Council, and two districts (Etshowe and Melmoth) for purposes of the Assembly, and applies the charter of 1856 to the province.

No. 17, reciting a proclamation of June 21, 1887, which applied Natal laws to Zululand, enacts that the Natal laws passed since that date, and now in force, are likewise to apply, subject to certain limitations and alterations, and with certain exceptions, among which are the Mines Law of 1888, and laws referring to game of 1891 and 1894, to immigration of 1891, 1894, 1895, 1897, and to marriage with a deceased wife's sister of 1897.

No. 46 extends the jurisdiction of the Supreme Court to Zululand.

**Arbitration.**—No. 24 purports to declare the law of arbitration. It introduces provisions founded upon the English Act of 1889, (*d*) with differences more apparent than real, and is still more similar to the Cape Colony Act. (*e*)

**Civil Service.**—No. 25 provides for the examination of candidates, and otherwise amends the Civil Service Act, 1891. No person is to be admitted to the service until he shall have attained seventeen years, nor, save as in the Acts specially provided, unless he is under twenty-five years of age. Rules may be made providing for special leave to civil servants who are Volunteers.

**Adulteration.**—No. 26 (*f*) gives power to town councils to make bylaws for preventing adulteration of food and drinks, and to appoint analysts.

**Glanders in Horses.**—No. 27 repeals the law of 1892, and provides for the isolation and reporting of cases of glanders. Any person offering for sale a horse, mule, or donkey infected, or which he has reason to believe may be infected, with glanders, is liable to a penalty of £50, or three months' imprisonment. Compensation for animals slaughtered is limited to £20, and to two-thirds of the value of animals whose disease was not openly manifested until shown by a test applied by the veterinary surgeon.

**Locusts.**—No. 30 extends the provisions of an Act of 1895 for the extermination of locusts.

**Contagious Diseases (Animals).**—No. 40 extends the provisions of an Act of 1894 for preventing the spread of contagious and infectious diseases among animals. A warranty against rinderpest is to be implied in ordinary sales, unless it be otherwise expressly stipulated in the conditions of sale or by written agreement. But the vendee must give notice within twenty-four hours after the first symptoms of rinderpest have been seen.

(*d*) 52 & 53 Vict. c. 49.

(*e*) See *supra*, p. 310.

(*f*) Repealed by No. 45 of 1901, *infra*, p. 360.

**Impounding Cattle.**—No. 42, repealing, with savings, earlier legislation, codifies the law of impounding. Without prejudice to greater damages, a person on whose lands cattle have trespassed may charge, without proof of special damage, sixpence for every horse, one penny for each sheep or goat, threepence for other cattle trespassing on grass land, and larger amounts for trespass on “gardens, crops, or other cultivated lands.”

**Dramatic Property.**—No. 44 purports to declare “the law affecting play rights.” Proprietorship of rights of representation may be registered. The duration of the right is the author’s life and seven years, or forty-two years from registration. “Play-right” registered after the author’s death endures for forty-two years from the date of registration.

**Deceased Wife’s Sister.**—No. 45 amends the Act of 1897, which removed restriction upon marriage with a deceased wife’s sister, by adding a saving clause as to property already inherited, and as to any *lis pendens*.

**Administration of Justice.**—No. 49 constitutes a “native High Court” to exercise jurisdiction over natives; but proceedings in insolvency, ordinary questions of ownership of immovables, franchise, divorce, and other matters are excepted from its control. In Zululand chiefs are to have jurisdiction between natives of their own tribes in civil cases, except matrimonial causes and cases arising in connection with Christian marriages; and in criminal cases, with exceptions of capital and other grave offences, offences against persons not being natives, pretended witchcraft, and new statutory offences. Appeals lie to the magistrate, and from him to the native High Court, which also has large original jurisdictions.

**South African Customs Union.**—No. 50, (g) after declaring it expedient to provide for the entry of the Colony into a South African Customs Union, delegates to the Governor the right to notify the Colonial States and territories constituting such union, and from time to time to declare the admission to the union of other Colonies, States, or territories based on civilised government.

1899 (h)

Acts passed—43.

**Cattle-Stealing.**—No. 1 provides for the better prevention of cattle-stealing, the word “cattle” including, *inter alia*, ostriches. No person is to remove cattle without a pass. The inhabitants of a kraal shall have the right to stop any native driving cattle past such kraal and to

(g) Repealed by No. 14 of 1903, *infra*, pp. 363–364.

(h) Contributed by Israel Davis, Esq.

demand from him information, and if dissatisfied to detain the cattle, the detention to be at once reported to the magistrate. Upon receiving a report from the magistrate that he is satisfied that some inmates of suspected kraals committed a theft or killing, or were otherwise party to it, and after certain preliminary steps, the Governor in Council may impose a penalty upon the heads of the kraals. Guilty natives not being women may be whipped as well as imprisoned. Butchers, auctioneers, and dealers are to keep registers of their dealings with cattle.

**Municipal Trading.**—No. 12 authorises the Durban Town Council to purchase the undertaking of the Durban Borough Tramways Company, Limited, and to equip that and other tramways with electric traction, etc. No. 39 confers upon the Town Council of Ladysmith additional borrowing powers to provide for the improvement and extension of the water supply.

**Customs.**—No. 13 consolidates and amends, in one hundred and sixty-eight sections, the laws relating to customs and such shipping laws as are connected therewith, including those relating to light dues. Wharf dues are not to exceed 10s. per £100 in value; tug dues not exceeding 3*d.* per £1 of the duties payable may be collected. Light dues and other charges are to be charged on deck cargo as well as on registered tonnage.

**Quarantine.**—By No. 14 the Law of 1884 as to quarantine regulations on the inland borders of the Colony is extended to the whole of the Colony and amended. The Governor may order the destruction of any hut or shanty upon the recommendation of the district surgeon and on making compensation. By No. 26 the Governor may prohibit the landing of persons or things from ships which have sailed from infected places.

**Inspection of Imported Cattle.**—By No. 27 (i) no cattle shall be allowed to enter the Colony by sea except on certificate signed by a duly qualified veterinary surgeon of the exporting country that they have been duly submitted to the tuberculin test and on inspection by an examiner of Natal. Animals proving to be affected by tuberculosis are to be destroyed at the quarantine station.

**Electric Lighting.**—No. 17 empowers the Minister of Lands and Works to license persons to carry wires for electric lighting across any public road, but the consent of the owners of the land abutting has to be obtained.

**Copyright in Designs.**—No. 19 establishes a register of designs and regulates copyright in designs. The general scheme of the Act is similar to Part III. of the Imperial Patents, Designs, and Trade Marks



Acts, 1883 (*k*) to 1888. (*l*) Thus ss. 13 to 19 inclusive of the Colonial Statute are almost identical with ss. 50 to 54 of the Imperial Patents Designs and Trade Marks Acts, 1883; but instead of the words in s. 50, sub-s. 2, of the Imperial Act, "before delivery on sale of any articles to which a registered design has been applied," the words in s. 14 of the Colonial Act are "before delivery *or* sale," and the same difference is made in s. 15, corresponding with the Imperial s. 51. The Colony being already in possession of a complete system of land registration, it has not been necessary to establish a new officer, but the Registrar of Deeds is made the registrar for the purposes of the Act. The section giving provisional protection for objects exhibited at industrial or international exhibitions adds "inter-colonial" exhibitions to the privileged category, and also abstains from making the certification of the exhibition by authority a condition of the privilege.

**Trade Licences.**—No. 20, in amending the Licensing and Stamp Act of 1898, incidentally shows that licences are required by agents, apothecaries, retail dealers, stationers, advocates, law agents, conveyancers, notaries, architects, civil engineers, and land surveyors.

**Explosives.**—No. 23 regulates the manufacture of explosives. Factories are to be licensed. The duty of making from time to time detailed regulations is devolved upon the Governor in Council, and the Act is therefore very considerably shorter than the Imperial Act of 1875. (*m*)

**Legal Procedure.**—No. 29 makes provisions for the examination by interrogatories in aid of neighbouring Colonies, British possessions, and States similar to those made by No. 13 (*n*) of the same year of the Cape Colony. By No. 31 the Supreme Court is reduced from four members to three. The three judges are ordinarily to act in full bench except in criminal cases or trials with a jury, but any two judges shall form a quorum. In the event of difference of opinion between two judges, the decision of the Court shall be suspended until all three judges shall be present, when the decision of the majority is to prevail.

**Pledges of Certificates of Shares.**—By No. 33 shares may be validly pledged by the legal holder thereof by delivery of the certificates, together with an instrument of pledge, but the Act shall not defeat the lien of the company itself or alter rights between the company and the registered holder.

**Sale of Intoxicating Liquors.**—No. 36 amends the Liquor Act, 1896. Retail licensed premises are still to be entirely closed on Sunday, but

(*k*) 46 & 47 Vict. c. 57.

(*m*) 38 & 39 Vict. c. 17.

(*l*) 51 & 52 Vict. c. 50.

(*n*) See *supra*, p. 313.

in addition to the provisions in favour of hotels and railway-stations, some exemptions are extended to restaurants, and to that interesting creature of the Imperial law the *bonâ-fide* traveller.

**Intestacy.**—No. 38, in sixty-eight sections, amends and consolidates the law as to the administration of intestate estates, and amends the law as to registration of deaths. The Master of the Court may himself administer small intestate estates. In other cases the appointment and duties of executors dative are provided for in detail. A false claim wilfully made against an intestate estate is to be punishable as perjury, and other wilful contraventions of the Act are punishable by a fine not exceeding £10, or one month's imprisonment with or without hard labour. Where an intestate had his domicile in another country, in which his estate is being administered, and has left movable property in the Colony, the executors or administrators appointed in the country of domicile shall be entitled to take possession of and administer the movable property in the Colony whether or not executors dative have been appointed in the Colony, subject to their obtaining an order of the Colonial Court and giving security, but the right to prove claims before the Master and rights of mortgagees and others are saved, and the Court may impose conditions and may decline to grant an order, if it be not satisfied that such order will be in the interest of the intestate estate as a whole, or that persons in Natal having claims against the intestate estate will be equitably treated and exempted from delay. The Registrar of Deeds shall not pass transfer of any immovable property which is registered in the name of an intestate without leave of the Court, or where the Master is authorised to allow sale or transfer, without the written sanction of the Master.

**Mining.**—No. 43 consolidates and amends the laws relating to mining. The right of mining for and disposing of all minerals is vested in the Crown, subject to the provisions of the Act. Persons may prospect and peg off four claims without a licence, but shall within fourteen days of pegging out obtain a licence. Licences may be issued to any person of either sex over the age of sixteen years of European birth or descent. The royalty is fixed at  $1\frac{1}{2}$  per cent. per annum on the value of minerals at the mine. An owner of land not being of European birth or descent may in respect of land owned by him exercise all the rights and powers under the Act. Licences to prospect on private lands shall not be granted without notice to the owner, who shall have the right to lay objections before the Deputy-Commissioner of Mines, with an appeal to the Minister. In all running rivers and watercourses from which water is diverted for mining purposes, there shall be left running sufficient water for general use and for use of owners and occupiers of land. The pecuniary

rewards for discoveries offered by the Cape Colony Act of 1898 (*o*) are not repeated in this Statute. Native servants may not be paid in gold or precious stones, and such wares are not to be purchased except from persons of European birth or descent, nor shall native gold or precious stones be disposed of except to bankers or licensed persons. Large powers are given to the Governor in Council to make from time to time regulations for carrying into effect the provisions of the Act.

1900 (*p*)

Acts passed—15.

**Indian Immigration.**—By No. 1 (*q*) some small amendments of the Indian Immigration Law of 1891 are made. An Indian immigrant who has made a complaint is to be taken back to his employer by a messenger, and the cost of such messenger is to be paid by the employer, unless the complaint was frivolous and unfounded (in which case deduction may be made from the immigrant's wages). An immigrant refusing to return to his employer may be punished in accordance with the previously existing law.

**Census.**—By No. 8 the Governor may by proclamation order a census in accordance with the provisions of the law of 1880. He may, in addition to providing for a census of the population, also direct a census to be taken of the lands, live stock, and produce of the Colony. The Governor may issue special instructions as to the census of the native population.

**Treason.**—By No. 14 provision is made for better and more speedy trial of persons accused of treason. Three persons are to be special commissioners to constitute the special Court, and each commissioner shall be a person either qualified to be appointed a judge of the Supreme Court or a judge of one of the superior Courts of any of her Majesty's Colonies. One at least of such commissioners shall be a judge of the Supreme Court. The president is to be paid at the rate of £1500 and the other two commissioners at the rate of £1000 each per annum. The Attorney-General may remit any case of treason for trial by a magistrate without a jury in the same way as if treason were not excepted from a magistrate's jurisdiction under the Act of 1896. Any case of treason in a competent Court shall be concluded as if the Act had not passed, but such Court may before plea direct the case to be removed to the special Court. All proceedings and judgments in magistrates' Courts shall be subject to appeal to the special Court.

(*o*) See *supra*, pp. 310, 311.

(*p*) Contributed by Israel Davis, Esq.

(*q*) Extended to Zululand by No. 8 of 1901, *infra*, p. 356.



**Indemnity.**—By No. 15 (*r*) the Governor and the officer commanding her Majesty's forces, and all persons acting under their authority and in good faith in regard to Acts during the existence of martial law, are indemnified in respect of all acts done in the suppression of hostilities and the maintenance of good order and government and the public safety. Sentences passed by martial law or by any Court or person exercising judicial functions under the authority of the general officer commanding, or of any officer of her Majesty's forces purporting to exercise authority in that behalf since the proclamation of October 15, 1899, are confirmed and approved, and are to be deemed to be sentences passed by duly constituted Courts of the Colony. The Governor's certificate that acts have been done under such authority or in good faith, etc., is to be conclusive. Any order made by the Governor after October 23, 1899, for suspending the operation of any Act of Parliament is confirmed. The Governor and the Colonial Treasurer and all persons concerned are indemnified in respect of any payments which have been made from the Consolidated Revenue Fund for meeting expenses occasioned by the state of war subsisting, but which have not been authorised by an Act of Supply.

## 1901 (*s*)

## Acts passed—50.

**Zululand.**—By No. 8 the Laws and Acts relating to Indian immigration enumerated in the schedule to the Law (*t*) are to be extended to Zululand, from a date to be appointed by proclamation in the *Natal Gazette*.

By No. 10 the Registry of Deeds for Zululand is abolished, and the powers of the Registrar of Deeds for Natal are extended to Zululand. Consequent fiscal regulations are made.

**Cattle and Wild Animals.**—By No. 12 a duty of £100 is imposed on the exportation of every Angora ram or ewe from the Colony under penalty of a fine of not less than £25 or not more than £100, or imprisonment in default of payment. The duty is not payable in the case of exportation to South African Colonies, which impose a similar duty on the exportation of Angora sheep. The Act is not to take effect until proclamation, which is not to be made before similar enactments are promulgated by the Government of the Cape of Good Hope and the Province of Mozambique.

**Harbouring Unmarried Child, etc.**—By No. 13 a magistrate may make orders for relief upon complaint by parents, guardians, persons

(*r*) See *infra*, p. 359.

(*s*) Contributed by Israel Davis, Esq.

(*t*) Including No. 1 of 1900, *supra*, p. 355.

entitled to service, etc., that any unmarried child or unmarried native female is harboured or kept.

**Public Holidays.**—By No. 18 the following are declared to be public holidays—namely, New Year's Day, Good Friday, Easter Monday, Whit Monday, May 24th (Victoria Day), Michaelmas Day, November 9th (the King's birthday), Christmas Day, and any day appointed by proclamation of the Governor.

**Burial-Grounds.**—By No. 19 provision is made for the acquisition by the Government under agreement or under the Lands Clauses Consolidation Law, 1872, for the purposes of providing burial-grounds for officers, non-commissioned officers, and men on either side who have died in the course of or from the effects of the recent campaign in South Africa.

**Burr-Weed.**—By No. 20 (*u*) the *Xanthium strumarium* burr-weed is included in the provisions relating to the *Xanthium spinosum* burr-weed in Law No. 38 of 1874.

**Boilers.**—By No. 28 regulations are made for the annual inspection and the testing of boilers by inspectors, and for rules to be made by the Governor in Council for the objects of the Act. All persons keeping and using a boiler for generating steam are to obtain annual licence for ten shillings, subject to obtaining a previous certificate of satisfactory examination by the inspector. Boilers used in public departments, including railways, are exempted.

**Trust Funds.**—By No. 31 the Colonial Treasurer shall without further appropriation pay out of the Natal Public Account in London any sum adjudged by final judgment, decree, rule, or order of any Court of competent jurisdiction in the United Kingdom to be payable by the Government in Natal in respect of any Natal Government securities. In the case of Colonial stock comprised in the Imperial Colonial Stock Act, 1877, (*x*) the Colonial Treasurer shall without further appropriation pay out of the same account in London the sums required to be paid to enable the registrar of such stock to comply with the requirements of the Imperial Act.

**Intoxicating Liquors.**—By No. 32 any borough or township may make bylaws fixing the hour of ten at night as closing time. Licences are not to be renewed after three convictions of the applicant of contraventions of the Liquor Act of 1896, where such contravention took place with the connivance or concurrence of the applicant. Licences are not to be transferred pending any charge. The making of "isityimiya" from fermented sugar is wholly prohibited. Clubs supplying liquors to members and guests are to obtain club licences. Applications for new club licences are to be made in the same way as applications for bar

(*u*) See *infra*, p. 367.

(*x*) 40 & 41 Vict. c. 59.

licences or country hotel licences. All applications for new club licences are subject to the approval by the Governor upon the recommendation of the mayor or chairman of the local board.

By No. 37—which is not to take effect until after a proclamation notifying agreement by the Colonies and possessions parties to the South African Customs Union of 1898 to impose a customs duty as provided by the Act—an excise duty of twopence per gallon is to be levied, with certain exceptions, on every gallon of beer exported from a brewery in the Colony.

No. 33 is a consolidating Statute of one hundred and fifty-nine sections relative to wines and spirits. It provides for licensing and regulating distilleries, for excise and other purposes, and enacts that wines made in Natal shall be exempt from duty.

**Supreme Court.**—By No. 34 Scottish law agents are declared to be within a previous enabling Statute. An appeal from the Circuit Court is to lie under the Supreme Court Act, 1896, at the instance of either the prosecution or the accused in any criminal case in which an appeal shall have been brought from the Magistrates' Court to the Circuit Court. This Act further provides for the execution or stay of a judgment and sentence on such appeals.

By No. 39 power is given to the Supreme Court to make rules, subject to the law of evidence or any Act or law, for the authentication of the execution of documents executed out of Natal which may be produced or used in any court or public office in the Colony.

**Magistrates.**—No. 43 amends the Civil Service Act, 1894. No person is to be appointed a magistrate or assistant magistrate who has not served five years and upwards in the Natal civil service, unless he has passed an examination under s. 35 of the principal Act or is an advocate or solicitor of the Supreme Court. The Governor is to have the power to calculate pensions in cases where officers have served partly in the Colony and partly in the Imperial service or any other Colony or possession.

**Road Boards.**—No. 35 repeals and re-enacts with amendments the Road Board Law, 1888. Road boards may be constituted for every magisterial division, except certain urban divisions. They have jurisdiction as to fencing, removal of gates, etc.

**Natal Cape Railway.**—By No. 36 the Governor is empowered to make and maintain a line of railway commencing by junction with the main line of the Natal Government Railway at Pietermaritzburg and ending at or near Riverside on the border of the Cape Colony.

**Children.**—No. 38 provides for the support or training of destitute children and juvenile offenders.



**Indemnity.**—No. 41 extends Act No. 15 of 1900 (*y*). It is an Act of general indemnity for anything commanded or done in obedience to commands in the Colony for the suppression of hostilities or the maintenance of good order and government or for the public safety. Sentences of military tribunals or any Court held under military authority are confirmed. The Governor's certificate that any act was done under such authority or in good faith is to be conclusive. All trade and customs arrangements made in regard to the Orange River Colony by the Governor or person administering the Colony for the time being are ratified or declared to be valid until revoked by the Governor. Any order made after October 23, 1899, by the Governor for the time being or person administering the Colony for suspending the operation of any Act of Parliament is confirmed. The Governor and the Colonial Treasurer and all persons concerned are indemnified in respect of any payments made by the Colonial Treasurer from the Consolidated War Fund for meeting expenses occasioned by the subsisting state of war, but which have not been authorised by an Act of Supply.

**Public Health.**—By No. 44 the Governor in Council is empowered to appoint a Public Health Officer as head of the Department of Public Health for the Colony with subordinate district health officers. The Minister of the Department of Health may appoint sanitary inspectors and other employees. A Board of Health is constituted to assist the Government with advice. The Governor in Council may make regulations relative to sanitation, nuisances, and public health. These regulations may, among other things, provide for the cleanliness and sanitation, ventilation, drainage, and removal of rubbish from all premises, stabling and sheds for animals, or places where milk or food of any kind is prepared or sold, for the methods of delivery of food, the prevention of pollution of water, and of nuisances in manufacture, and for the removal, destruction, or disinfection of contaminated clothes or articles. The district health officers may make special regulations upon any outbreak of epidemic disease. Certain nuisances are prohibited. Every case of infection and epidemic disease is to be at once reported both by any medical practitioner and by any householder or occupier of the premises, under penalty of a fine with or without imprisonment.

Diseases may be declared infectious by the Health Officer. The Minister may provide hospitals. The Governor may make regulations for isolation or for the exercise of powers under the quarantine and leprosy laws and for other purposes in the case of an outbreak or threatened outbreak of general disease in the Colony. Owners and

(*y*) See *supra*, p. 356, and *infra*, p. 362.

drivers of public conveyances and owners or occupiers of premises are to disinfect the same after knowledge of any case of occupation of the same by a person suffering from infectious disease under penalty of a fine. The boroughs of Pietermaritzburg and Durban are excepted from the operation of the Act, but the Act may be extended to them by Order of the Governor in Council. The Act further provides for compensation in certain cases for destruction to or injury of property, for offences, punishments, and the enforcement of the provisions of the Act.

**Adulteration.**—No. 45 (*y*<sup>1</sup>) amends the law relating to the adulteration and fraudulent sale of food and drugs. Articles of food or drugs are not to be mixed, and are not to be knowingly sold when mixed, with any material so as to render the article of food injurious to health, or so as to affect injuriously the quality or potency of the drug. No person shall sell to the prejudice of the purchaser any article of food or any drug which is not of the nature, substance, and quality demanded by the purchaser, except non-injurious additions for the production or preparation for carriage or consumption, proprietary or patent medicines, foods or drugs unavoidably mixed or compounded under the Act, or unless a label is affixed to or with the article stating that the same is mixed. Margarine and mixtures of margarine must be so marked. To affix false labels and warranties is made a punishable offence. The Act provides for analysis and the appointment of town and other analysts. The Governor in Council may make regulations and town councils may make bylaws within the district for the purposes of the Act. All contraventions of the Act or such regulations or bylaws are cognisable in the Magistrates' Courts, and all offences are made punishable by fine with the alternative of imprisonment.

**Native Law.**—By No. 1 the supreme chief, with the help of three nominated advisers, is to decide who shall be deemed the general heir of a deceased chief in charge of a tribe. His decision is to be final.

By No. 15 a magistrate, with the approval of the Secretary for Native Affairs, may grant to any native chief having the written permission of the Governor to keep a gun, one or more permits to purchase gunpowder not exceeding two pounds in quantity each year.

No. 46 repeals and re-enacts with amendments the Labour Tout Regulation Act, 1896. Any person supplying or contracting to supply natives to be employed in work of any kind (therein defined as a "tout") must take out a licence from and with the approval of the magistrate in each division in which he intends to procure native labour. The charge for every such licence is £5 per annum. The tout's contract with natives is to cease on their entry into the service

(*y*<sup>1</sup>) See *supra*, p. 350.

for which they are procured. The contract by natives so procured with their employers is to be registered. Wages are to be paid in full to natives without deduction of debt or fee to the tout. The following practices are prohibited: Touting for services outside the Colony, unlicensed touting, entry by any tout without permission on any Crown or private land or native location, enticing servants from their employment, harbouring servants or apprentices who have deserted. The Act does not apply to persons engaged solely by or in the immediate service of the Imperial or Colonial Government.

By No. 49 (z) natives are to be required to obtain an identification pass in the form set out in the schedule or to be registered, and every person intending to engage a native as a servant shall first require the native to produce his pass.

By No. 50 native servants tried for an offence are to return to their master's service immediately after the trial or sentence.

## 1902 (a)

## Acts passed—30.

**Foreign Probates** (No. 2).—The executor or trustee of any proved will under the Letters of Administration and Foreign Probates Act, 1894, is by this Act empowered to appoint by power of attorney an agent in the Colony to do all or anything that the executor or trustee might himself be required or entitled to do under such will.

**Lotteries** (No. 3).—The Lotteries Act, 1878, is by this Act extended to all lotteries for money or money prizes or for securities for money or for land or any other thing whatsoever, whether such lotteries be known as "sweeps" or under any other name; and any person establishing or conducting or assisting such lottery, as by allowing a house to be used for it or printing, circulating, or publishing any notice of it, is liable to a fine of £50 or six months' imprisonment, and it makes no difference whether the lottery in respect of which any act in the Colony is charged was held or intended to be held elsewhere than in the Colony.

**Shipping: Regulation of Vessels** (No. 4).—This Act empowers the Governor in Council to make regulations as to any ship, boat, or vessel plying on or near the coast of Natal in the following matters:—The classification of vessels, their equipment with lights and life-saving apparatus, the number of passengers carried, the survey and inspection of vessels. Fines may be imposed for contravention of these regulations, and a vessel going to sea without the necessary certificate may be detained.

**Registration of Deaths.**—No. 5 provides for the registration of the

(z) See *infra*, p. 366.

(a) Contributed by Israel Davis, Esq.



deaths of persons belonging to the Imperial military forces in Natal, or to a police, volunteer, or other military force of Natal.

**Fencing.**—By No. 9 authority is given to private persons over whose land public roads pass to erect gates across the road subject to the sanction of the Chief Engineer, but no gates are to be erected upon any main trunk road.

**Water Supply.**—No. 11 gives the Governor power to provide water supply for villages under the Act of 1897 upon a memorial of three-fourths of the resident householders, the expense to be defrayed by local rates to be imposed by the Governor.

**Pensions.**—No. 16 provides that civil servants may be required to retire at fifty-years upon pensions calculated according to the law of 1874, and that every such servant except judges shall retire at the age of sixty-five. Women on the fixed establishment who have served for ten years shall be entitled to retire at fifty-five upon pension.

**Indian Immigrants.**—No. 17 (b) varies the law of election to the Indian Immigration Trust Board. No. 23 empowers the Board to raise a loan of £250,000.

**Grass Burning.**—No. 18 amends and extends the Act of 1895, and provides for inquiries by magistrates into fires occurring along the Government railways.

**Criminal Law.**—By No. 21 (c) the lessor of premises is empowered to apply to the magistrate for the summary ejectment of persons who use them for the purposes of a brothel for habitual prostitution, and these persons are subjected to penalties.

**Indemnity.**—No. 22 provides for a further indemnity for persons who in good faith have acted for the suppression of hostilities and the maintenance of good order and government since the passing of No. 41 of 1901. (d)

No. 30 extends the operation of the indemnity to a later date (December 5, 1902), and recognises that the state of war ceased on May 31, 1902.

**Land Settlement.**—No. 24 empowers the Governor in Council to acquire lands for the settlement of persons of European descent.

**Native Law.**—No. 28 makes additional provision for "togt" labour in boroughs. "Togt-man" means a day labourer or labourer for other terms less than a month, or a jobber, and applies only to natives. The town council of a borough may make bylaws providing for registration of togt-men, requiring that togt-men shall reside in a special compound, regulating the erection, structure, maintenance, and inspection of

(b) See *infra*, p. 377.

(c) Repealed by No. 31 of 1903, *infra*, pp. 364, 365.

(d) See *supra*, p. 359.

compounds, requiring tog-men to wear badges, etc. Fees may be charged for registration and for licences of compounds.

1903 (*e*)

Acts passed—50.

**Territories** (No. 1).—This provides for annexation to the Colony of certain territories previously forming part of the Transvaal Colony, shortly referred to as the “Northern Districts.” Provision is made by Act No. 3 for the parliamentary representation of these Districts.

**Indian Children** (No. 2).—Every child of Indian immigrants is, on attaining in the case of males sixteen years of age and in the case of females thirteen years, required either to go to India or if they remain in Natal to remain under indentures or take out year by year a pass or licence. A free passage is given to India.

**Imperial Navy** (No. 5). (*f*)—This provides for payment annually to the Admiralty of £35,000 towards his Majesty’s Navy.

**Sale of Land** (No. 7).—Any purchaser on a sale of land by auction buying for a person other than himself is to disclose the name of such purchaser; on failure to do so the auctioneer may treat the bidder as himself the purchaser. If the person named as purchaser disclaims the purchase, the bidder must also pay the transfer duty. These provisions apply—*mutatis mutandis*—to purchase by alleged agents at sales which are not public sales.

**Title to Land** (No. 8).—This Act authorises the Registrar of Deeds to grant a certificate showing by endorsement on the title-deeds and diagrams the consolidation of contiguous properties owned by the same person.

**Explosives** (No. 10).—Extends the law as to the importation of explosives by sea to the importation of explosives over any inland border.

**Natal Museum** (No. 11).—Incorporates the trustees of the Natal Museum and defines their powers. It also provides for free admission to the Museum.

**Post Office** (No. 12).—Authorises the Governor to make regulations, *inter alia*, for the insurance of letters and parcels, and to arrange for extending such system of insurance to the United Kingdom or any British possession or foreign country.

**South African Customs Union** (No. 14). (*g*)—This Act, repealing No. 50 of 1898, (*h*) without prejudice to anything done thereunder, provides for the Colony entering into a South African Customs Union, the States composing which are to be notified by proclamation.

The duties henceforth to be paid on imported goods and merchandise

(*e*) Contributed by Edward Manson, Esq.

(*g*) Repealed by No. 9 of 1903, *infra*, pp. 372-373.

(*f*) See *infra*, p. 373.

(*h*) See *supra*, p. 351.

are set forth in the schedule to the Act. A rebate is allowed on any goods and articles the growth, produce, or manufacture of the United Kingdom imported therefrom into Natal for consumption therein or in any Colony, Territory, or State of the Union to the extent specified in the schedule to the Act.

An additional duty is imposed on bounty-fed sugar. Other duties are dealt with in detail.

**Rinderpest** (No. 28).—With a view to preventing the spread of this disease any veterinary surgeon or stock inspector who has reason to believe that any cattle are infected may direct such cattle to be isolated and inoculated with glycerinated bile or serum, and the owner or person in charge of such cattle is bound to carry out the order.

Cattle sold at any market or public auction are to be deemed to be warranted free of rinderpest, and so too cattle sold privately, unless otherwise agreed.

**Rabies** (No. 29).—Any person may lawfully destroy any dog showing open symptoms of rabies, or known or reasonably believed to have been bitten by a rabid dog or other rabid animal. Any veterinary surgeon or police constable may likewise destroy or order the destruction of any dog he may believe to be dangerous upon evidence of its having been in contact with a rabid animal; but this is not to give immunity to any person who destroys a dog wilfully or without reasonable grounds. The Governor may issue a muzzling order. The muzzle must be of a pattern approved by Government.

**Immigration** (No. 30). (*i*).—This is to exclude what is compendiously described as the “prohibited immigrant,” including persons unable through deficient education to write, in a European language, persons having no visible means of support, idiots or insane, persons suffering from a loathsome or dangerous contagious disease, convicts, prostitutes, and persons deemed undesirable immigrants by the Minister.

Such persons making their way into the Colony may be removed or imprisoned, or arrested on suspicion. For the purpose of removal the Government may contract with the masters of vessels to carry back the immigrant.

The master of a ship arriving at Natal is to furnish a list of all passengers not forming part of the crew and is liable to a penalty of £100 for each “prohibited immigrant” landed.

Passes may be granted for a temporary visit or for embarkation.

**Brothels** (No. 31). (*k*).—Any person convicted of keeping a brothel is

(i) See *infra*, pp. 367, 372. A complete statement as to the numerous Acts regulating immigration into Natal and the condition of the immigrants is contained in Parliamentary Paper, 1904, Cd. 2105.

(k) Repeals No. 21 of 1902, *supra*, p. 362.



liable to three months' imprisonment without the option of a fine, and to six months for a second offence. Premises occupied by one or more women known to be common prostitutes and carrying on prostitution therein are to be deemed a brothel.

A manager, tenant, lessee, or lessor with knowledge of a brothel is to be deemed a keeper of it. The onus of proving the keeping of premises as a brothel is on the prosecution.

Any householder may complain to a magistrate of any premises in his street or vicinity, and the magistrate, after taking his information on oath, may issue his warrant for the arrest of the accused, or previously to doing so authorise a sergeant of police to enter the premises at any hour for the purpose of discovery.

Contracts to let premises for a brothel are to be void. A person procuring or attempting to procure any girl under twenty-one for prostitution is liable to two years' imprisonment, but the evidence of one witness only—unless corroborated—is not to be sufficient to convict.

Procuring, defilement by threats, fraud, or drugs is punishable with five years' imprisonment. Persons knowingly living on the earnings of prostitution or soliciting for immoral purposes are liable to two years' imprisonment, and if a male to twenty-five lashes. A person living with a prostitute is to be deemed *prima facie* to be knowingly living on the earnings of prostitution.

Illicit sexual intercourse between any white woman and any coloured person is made unlawful. Any keeper of a brothel in which such intercourse takes place is liable to five years' imprisonment, and in case of a male twenty-five lashes.

**Rhodesian Redwater** (No. 32). (*l*)—This disease, otherwise known as East African coast fever, is common among cattle. The present Act is an attempt to extirpate it by quarantining, destroying, or dipping any infected cattle and declaring certain districts to be "infected areas."

**Militia** (No. 36). (*m*)—This Act creates a Militia force in lieu of a Volunteer force for the defence of the Colony. The force is to consist of all the male inhabitants of European descent in the Colony from the age of eighteen to fifty, with certain exceptions—judges, ministers of religion, mail carriers, police officers, etc. The Governor is Commander-in-Chief, with district commandants under him. The strength of the active Militia, in peace time, is not to exceed 4000 men. It is to receive such pay as may be voted by Parliament. Every Government or aided school or college in the Colony is to have a cadet corps. There are detailed provisions for securing obedience to orders and other incidental matters.

(*l*) See *infra*, p. 376.

(*m*) See *infra*, p. 374.

**Native Marriages** (No. 44).—No minister is to solemnise any marriage between natives according to Christian rites unless licensed to do so by the Governor.

**1904** (*n*)                      Acts passed—Public, 35; Local, 13.

**Cattle Stealing** (No. 1).—Natives convicted of this offence are made punishable with whipping—not more than twenty-five lashes—or imprisonment not exceeding five years with hard labour. For subsequent convictions the punishment is more severe, the maximum being fifteen years' imprisonment and thirty lashes or transportation. Women are not to be whipped. Offenders under sixteen are to be whipped with a rod, not a lash.

**Native Locations** (No. 2).—It has been found desirable to establish native locations in the Colony in which natives, with certain exceptions, may be compelled to reside. This Act gives town councils the necessary powers to establish such locations and make bylaws for their regulation, including the prohibition of the sale therein of Kaffir beer and other intoxicants. After provision of such a location all natives—other than freeholders of the borough, or those exempted from native law, or employed in domestic service and furnished by the employers with proper sleeping accommodation—are compellable to reside in such locations, and native sleeping huts or dwellings in the borough may be pulled down.

Land may be compulsorily acquired by a town council for the purposes of such location.

**Native Servants** (No. 3).—In 1901 an Act(*o*) was passed to facilitate the identification of native servants. Every native before taking service was required to furnish himself with a pass granted by a Pass Officer after proper inquiry, and masters were required to call for such pass before engaging a native servant.

The present Act extends the policy of this Act to certain classes of natives not originally included—policemen, messengers, jobbers, 'ricksha-pullers, natives engaged in laundry work, and native tenants liable to render services to the landlord in lieu of rent.

Natives moving from the land of one private owner to that of another must get a new pass from a magistrate.

**Game** (No. 4).(*p*)—This is an extension of the Game Act, 1891. Buffalo, waterbuck, blue wildbeest, rhinoceros, and Java (or Mauritius) deer, the female bushbuck commonly called the imbabala, and the buck known as the impala and inyala are included in the list of animals

(*n*) Contributed by Edward Manson, Esq.

(*o*) See *supra*, p. 361.

(*p*) Repealed by No. 8 of 1906, *infra*, p. 372.

which cannot be hunted or killed without the express permission of the Governor.

The close season for wild duck and wild geese is to continue to the end of February only.

**Immigrants (No. 7).**—The scheme of this Act is to supply regulations for “transit immigrants.” That is to say, labourers from oversea whose introduction may have been approved by the Government of any British Colony or possession in South Africa. The Immigration Restriction Act, 1903, (q) is not to apply to such “transit immigrants.”

**Post Office (No. 10).**—This is designed to relieve the congestion of the post-offices of the Colony. Any newspaper, printed circular, advertisement or the like remaining unclaimed or undelivered after having lain there for two months may be destroyed by the postmaster.

**Wireless Telegraph (No. 11).**—This reserves to the Colonial Government the sole right to transmit and receive “wireless telegrams.” The penalty for contravention of the monopoly is a fine of £1000.

**Noxious Plants (No. 12).**—The spread of the *Xanthium spinosum* or burr-weed was the subject of very elaborate legislation under the Lands Improvement Act, 1874 (No. 38). (r) The present Act applies its provisions to the thistle known as *Cnicus diacantha*.

**Insectivorous Birds (No. 13).**—This extends the Wild Birds’ Protection Act, 1896, to homing or carrier pigeons, and expunges the word “wild” whenever occurring in that Act.

**Commissioners of Oaths (No. 14).**—The Governor is empowered from time to time by commission to appoint any fit and proper persons to be commissioners for oaths. The fee for every oath taken is one shilling.

**Land (No. 15).**—Many original deeds of grant and transfer of lands situate in the Northern Districts of the Colony having been lost or destroyed, this Act empowers the registered owner in such a case to apply to the Supreme Court upon notice to the Registrar of Deeds for a certificate of registered title which may, after satisfactory proof of title given and notices published, be granted in a form scheduled to the Act.

**“Contingencies Fund” (No. 21).**—This Act authorises the creation of a “Contingencies Fund” to “enable the Executive Government from time to time to incur expenditure on such unforeseen services as cannot be postponed without serious injury to the public interest until adequate provision can be made therefor by Parliament.” This seems to point to railway expenditure.

**Rape and Indecent Assault (No. 22).**—Indecent assault is made cognisable in the Courts of Magistrates and is punishable with

(q) See *supra*, p. 364.

(r) See also No. 20 of 1901, *supra*, p. 357.



imprisonment not exceeding two years with or without hard labour, or by whipping not exceeding twenty-five lashes, or both.

**Conveyancers** (No. 23).—This is an illustration of the growing tendency to organise professions and trades. No person, not being a notary public or an advocate or attorney of the Supreme Court or in actual practice under licence as a conveyancer at the date of the Act, is to practise as a conveyancer unless admitted and enrolled as a conveyancer by the Supreme Court. Rules for examination and admission of conveyancers are to be made by the Court. Practising without admission and enrolment makes the person liable to a fine of £10.

**Military Manœuvres** (No. 24).—The facilitating of military manœuvres is the subject of this Act. It gives powers to authorised forces to pass over, camp, construct military works, draw water from, and do other acts on any land, with reservations for certain places and the protection of the picturesque. Compensation is to be paid for damage. Persons wilfully obstructing the manœuvres or destroying flags or marks or maliciously cutting telegraph wires or instruments are to be liable to a fine of £10.

**Salaries of Judges** (No. 25).—The salary of the Chief Justice is raised to £2000 and the puisne judges to £1750 a year.

**Closing of Shops** (No. 29).—The application of this Act is restricted to municipal boroughs and townships. It empowers the local authority in these to make bylaws regulating the hours for closing all shops. Hotels and other premises licensed for the sale of intoxicating liquors are not affected, nor is anything to interfere with the provisions of the Lord's Day Observance Law, 1878 (No. 24). The penalty for contravention of a bylaw is £5.

**Dentists** (No. 37).—This permits persons who on January 1, 1904, were *bonâ fide* engaged in the practice of dentistry or dental surgery in the province of Zululand to register under the Dentists Act, 1896, but restricts such persons in Zululand.

**Locusts** (No. 40).—The insects legislated against are the *Acridium purpuriferum* and the *Pachytylus migratorius* while in the stage known as hoppers or voetgangers. The Governor is given the power to proclaim any portion of the Colony a "locust area," and in such case all owners of land in the area, Europeans, natives, or Indians, are to concur in carrying out any measures the Governor may order for exterminating the locusts. Wilfully driving locusts off any property on to a neighbouring property is punishable with a fine of £50 or six months' hard labour.

**Agriculture** (No. 44). (s)—This creates a Land Board composed of the Secretary to the Minister of Agriculture and four other persons with

(s) See *infra*, p. 373.

a knowledge of agriculture and farming pursuits appointed by the Governor in Council. Regulations are to be made from time to time by the Governor in Council for the administration of the Act.

If any available lands are considered suitable for settlement, the Minister of Agriculture is to submit a plan of any proposed settlement, with an estimate of cost, for approval by the Governor in Council. On approval the Government may acquire the lands included therein by agreement with the owner. The Board may then have the lands surveyed, subdivided, and laid off in allotments, classified as first-class, suitable for special farming; second-class, suitable for mixed farming; third, suitable for pasture or tree planting. The length of lease and terms of letting of each class are defined by the Act.

With a view to promoting the success of the settlements, tramways may be authorised upon any roads between the settlements and railway stations, towns or ports. Water may be supplied, advances made by the Board for improvements and stock and for public works. Butter, cheese, and tobacco factories may be assisted, and sites may be selected for schools.

**Plant Diseases (No. 45).**—This Act, which repeals the Act of 1881, makes provision for preventing the importation into the Colony of diseased plants. The Minister of Agriculture is to be assisted by an Honorary Board of Advice consisting of five members—the Government Entomologist and four representative fruit-farmers and nurserymen.

Importation of any plant may be prohibited by proclamation, and all plants in any nursery affected with any specified disease may be ordered to be destroyed or isolated. Proper chambers for fumigation are to be provided by every nurseryman. Inspectors may seize diseased plants and have them destroyed. The Act schedules certain insect pests and plant diseases.

**Assurance and Insurance Companies (No. 47).**(*t*)—Any such companies, not having their head office within the Colony, must before commencing business in the Colony deposit £10,000 as security with the Colonial Secretary.

**Indians and Negotiable Instruments (No. 48).**—No judgment is to be given against an Indian on any promissory note or negotiable instrument unless such note or instrument is in English and certified to have been signed before a magistrate by such Indian signatory after being explained to him.

(*t*) See *infra*, p. 374.

1905 (*u*)

Acts passed—42.

A remarkable feature of the legislation of the Colony this year is the evidence it affords of the growing activity in railway construction. No less than six Acts deal with this subject.

**Fires from Railway Engines** (No. 3).—Given damages by fire occasioned by a railway engine, it is no longer incumbent on the plaintiff to prove negligence by the Railway Department. Negligence is to be presumed.

**Board of Health** (No. 8).—The Government bacteriologist is to be an *ex-officio* member of the Board of Health.

**Animals** (No. 12).—A pound-keeper is to have a fee of sixpence a day for herding pigs.

**Detention of Prisoners** (No. 15).—Criminals sentenced in any South African Colony may, under this Act, be imprisoned in Natal.

**Naturalisation of Aliens** (No. 18).—This Act is designed to facilitate the naturalisation in Natal of aliens of European birth or descent. The conditions are, briefly: (1) five years' residence in Natal, or one year in Natal, and four in some other part of his Majesty's dominions, and (2) a magistrate's certificate of good repute.

The naturalised alien is to subscribe a declaration of allegiance.

Every married woman is to be deemed a subject of the State of which her husband is for the time being a subject.

The Act further provides for a half-yearly return being published of all persons to whom certificates of naturalisation are granted under the Act. A fee of £1 is payable for a certificate.

**Licences** (No. 26).—A licence is required for keeping a native eating-house outside the limits of a municipal borough or of a township constituted under Law No. 11, 1881 (£5).

A hawker or itinerant trader's licence is to be confined to the limits of the magisterial division in which it was granted.

**Liquor Laws** (No. 27).—The words "intoxicating liquor" are to include "isityimiyana," whether made from treacle, sugar, or other ingredients (the pronunciation of this word ought to be a guarantee of sobriety). "Isityimiyana" may be searched for and seized by the police, on any premises, huts, or dwellings where there is a suspicion that it is made.

**Natal Institute of Land Surveyors** (No. 28).—The objects of this society are the promotion and improvement of land surveying and maintaining the credit of the profession. This Act incorporates the society. Every member is liable to a sum of £10, but no more, in



addition to the annual subscription. The Council is given power to frame bylaws.

**Succession Duty** (No. 35). (x)—This Act regulates the rates of duties to be charged on successions to any property, other than immovable property, outside the Colony. A lineal descendant or ancestor is to pay 1 per cent., a brother or sister 2 per cent., a stranger in blood 5 per cent. Estates of less than £100 are exempt.

**Closing of Shops** (No. 36).—All shops—which term has a wide definition—are to be closed: on Sundays and public holidays, the whole day; on Monday, Tuesday, Wednesday, and Thursday, at 5.30 in the afternoon; on Fridays at 10 o'clock in the evening; on Saturday at 2 o'clock in the afternoon. Hawkers and pedlars are not to ply while the shops are closed.

The following are exempted: Restaurants; fresh milk, fruit, flower, and vegetable shops; tobacconists; bakers and confectioners; undertakers; newsvendors and railway bookstalls; retail bicycle shops; butchers, poulterers, and fishmongers. There are special hours for chemists and hairdressers. Shopkeepers are liable for contravention of the Act, whether present or cognisant of the contravention or not. Penalty £5.

**Poll Tax** (No. 38).—This Act imposes an annual poll tax of £1 sterling on every male person of the age of eighteen and upwards. The burden of proving nonage rests on the person claiming exemption.

Natives liable to hut tax are exempt from poll tax; also natives working in the Colony but domiciled elsewhere; also any person proving himself through poverty unable to pay; and any person merely passing through the country.

**Indian Immigration** (No. 39).—No person is to employ, whether as a servant or in any other capacity, any Indian immigrant who is required to take out an annual pass or licence, unless such Indian first produces his pass or licence. Penalty £5.

No. 42.—This Act enables an Indian immigrant, under certain circumstances, to enter into a new term of indenture not exceeding five years.

## 1906 (y)

Acts passed—55.

**Firearms and Ammunition** (No. 1).—This is a consolidating and amending Act. It imposes certain restrictions on the import and export of firearms and ammunition; also requires persons dealing in firearms to take out a dealer's licence, and sets forth conditions to be complied with by such dealers.

(x) See *infra*, p. 374.

(y) Contributed by the Hon. J. F. Bird, Acting Attorney-General.

No native or Asiatic is allowed to possess any firearm or ammunition without a permit from the Secretary for Native Affairs.

No. 22.—Any native or Asiatic may be granted exemption from Act 1, 1906, by the Governor.

**Immigration** (No. 3).—This Act amends the Immigration Restriction Act, 1903. (z) The reference to domicile in s. 4 (f) and s. 32 (a) of the Act for 1903 to apply only to domicile acquired by residence in Natal on the part of the person seeking to enter the Colony, and not to domicile acquired in any other manner.

**Finance: Loans.**—No. 4 authorises the raising of a temporary loan of £500,000, in accordance with the provisions of the General Loan Law, 1882; the money so raised to be applied to the payment of expenses in connection with the suppression of the Native Rebellion.

No. 47 authorises a further temporary loan of £500,000, to be applied to the payment of expenses in connection with the suppression of the Native Rebellion.

No. 53 authorises the Governor to borrow the sum of £100,000 from the Consolidated Loans Fund, to be used for the prevention or suppression of the disease known as East Coast fever.

**Fencing.**—Act No. 52 extends the operation of the Fencing Law, 1887, to the whole Colony, except the Province of Zululand and the Northern Districts, to which it may be extended by proclamation.

The Fencing Law of 1887 is one under which farmers who erect fences as the boundary between their own and neighbouring farms may compel the owners of the adjoining farms to contribute one-half of the cost, within a limit of price fixed by the law.

Hitherto the law has applied only to the districts to which it has been from time to time applied by proclamation after a resolution passed at a meeting of landowners.

**Game.**—No. 8 consolidates and amends the laws relating to game. It repeals Law 16, 1891; Act 24, 1894; Act 4, 1904; (a) and Zululand Proclamation 2, 1897. This Act makes provision for a close season, for the establishment of game reserves, and for the protection of certain game. The capture of game by means of traps and other methods set out in the Act is prohibited. The shooting of certain classes of game is altogether prohibited, and other classes of preserved game may only be shot under licence, on payment of a fee, and with strict limitations.

**Customs.**—No. 9 repeals Act 14, 1903. (b) Provision is made for the entry of the Colony into a South African Customs Union. The general principle of the Union is the charging of uniform customs duties on goods imported from abroad, free importation of goods made or

(z) See *supra*, p. 364.

(a) See *supra*, p. 366.

(b) See *supra*, p. 363.

produced within the Union Colonies, and payment over by the Coast Colonies of the duties collected on goods imported for consumption in the Inland Colonies, with a certain deduction for expenses. The arrangements under the Union Convention are to be carried out by regulations under s. 20. The Act fixes the duties to be charged on goods, etc., imported or brought into the Colony, the *ad valorem* rate on goods not specially scheduled being 15 per cent.; rebates of duty granted on goods and articles, the growth, produce, or manufacture of the United Kingdom or a reciprocating British Colony. A duty is levied and imposed upon spirits, methylated spirits, and beer, made within the Union when imported into this Colony, equal to the excise duty imposed when made in the Colony. (c) A rebate is allowed on spirits of wine made within the Union and imported into Natal solely for the use of chemists in the preparation of medicines, etc. The Act prohibits the importation of goods made in a prison or penitentiary, and opium, except for medicinal purposes.

**Excise.**—No. 10 repeals s. 11 of the Excise Act, 1901, and Act 34, 1903. This Act fixes the duty upon spirits made in the Colony at nine shillings a gallon on proof spirits, and so on in proportion for any greater or less strength, but with a minimum duty of seven shillings and sixpence per imperial gallon.

**Vehicles.**—No. 11 amends Law 13, 1865. Provides that the name and address of the owner of every waggon, cart, or other vehicle used on any public road or street shall be affixed or painted thereon.

**Witnesses** (No. 12).—To compel the attendance, as witnesses, of persons residing in this Colony before the Courts of neighbouring States and Colonies.

**Fugitive Offenders** (No. 13).—The jurisdiction under Part I. of the Act of the Imperial Parliament known as the Fugitive Offenders Act, 1881, (d) is to be exercised in Natal by magistrates appointed under the Magistrates' Courts Act, 1896.

**Franchise.**—No. 14 confers electoral franchise within the Northern Territories upon certain persons who were enrolled in the Burgher Lists of the late South African Republic.

**Liquor.**—No. 15 extends ss. 5 and 6 of Act 31, 1905, with reference to liquor licences and other licences to the Province of Zululand.

No. 44 amends the Liquor Act of 1896 in regard to the punishments for supplying liquor to natives and Indians.

**Railways** (Nos. 16, 34, and 49).—These Acts authorise the construction of railways.

No. 20.—To continue the laws providing for the management and working of the Natal Government railways.

(c) See Act No. 10, 1906.

(d) 44 & 45 Vict. c. 69.



No. 50.—Under this Act the General Manager of Railways is empowered to grant running powers and rights of user over private railways. The Act gives Government the right to purchase and take over any private railway which is connected with the Natal Government railways.

No. 55 authorises the construction and working of a line of railway, and ratifies a contract between the Government and Gustave Henry Bonas, relative to the construction, maintenance, and working of the said railway, the supply of coal to the Government, and the establishment of iron and steel works in the district adjacent to the said railway.

**Employers' Liability** (No. 18).—This Act repeals s. 6 of the Act of 1896, and provides for notice of action within three months in the case of any injury.

**Scab.**—No. 19 amends the Scab Law, 1887. Under this Act the Governor may authorise the entry of sheep into this Colony from the other Colonies in South Africa without dipping.

**Succession Duty.**—No. 21 amends the Act of 1905. (*e*) This Act provides that no succession duty shall be levied in respect of property situate in the United Kingdom of Great Britain and Ireland.

**Vaccination.**—No. 24 amends Law of 1882 and Law 10, 1885. The Act provides for compulsory vaccination, subject to a "conscience clause." Special provisions are made in regard to Indians, and the vaccination of natives will be carried out according to regulations to be made by the Governor in Council.

**Foreign Enlistment.**—No. 26 extends the Foreign Enlistment Act, 1870, to Natal, including the Province of Zululand and the Northern Districts.

**Prisoners.**—No. 32 authorises Government to enter into contracts for the employment of prisoners undergoing imprisonment with hard labour.

**Registration of Firms** (No. 35).—This Act provides for the compulsory registration of every firm consisting of two or more persons carrying on business or having a place of business in Natal; registration is also necessary in the case of a business being carried on by any person under a firm name consisting of the name of any other person in addition to his own.

**Militia.**—No. 36 makes slight amendments to the Act of 1903 (*f*) with regard to parades for the Reserves, and empowers the Governor to raise special Service Corps.

**Insurance Companies.**—No. 43 amends Act 47, 1904, (*g*) with regard

(*e*) See *supra*, p. 371.

(*f*) See *supra*, p. 365.

(*g*) See *supra*, p. 369.

to the lodging of security by Assurance and Insurance Companies not having their head offices in Natal. Under the amendment an agent for any insurer not domiciled in Natal has to lodge security.

**Royal Arms (No. 45).**—This Act prohibits the unauthorised use of the Royal Arms and Government badges and the like.

**Indemnity (No. 51).**—This Act indemnifies the Governor, the Executive Council, Commandant of Militia, and all military and civil authorities of the Colony in regard to acts during the existence of martial law.

1907 (*h*)

Acts passed—34.

**Insurance (No. 1).**—No clause in a policy of life insurance in Natal in restraint of military service shall be a defence to a claim under that policy if the person insured is called out upon active service in the Colony.

**Indian Immigrants (No. 2).**—The Act provides for the registration by both parties to a marriage under Indian rites, either before the magistrate or the Protector of Indian Immigrants. Should the woman be under the age of eighteen years the duty of registration falls upon her parents. Further, if the parents have promised an Indian girl in marriage, and have received presents from the intended husband, they are liable to action if they fail in any way directly or indirectly to carry out their engagement. Indians living in the Colony, and having been married before the Act came into force, are allowed to take advantage of this Act. Registration under this Act legalises a marriage which would not otherwise be recognised by law.

No. 3 permits the Crown to take action in cases of the harbouring or employment of Indian immigrants who have deserted from their employer, and makes provision for payment of costs.

**Fencing (No. 6).**—This Act is to be read with the Fencing Law No. 30 of 1887, and was passed for the purpose of preventing the spread and contagion of the cattle disease known as East Coast fever. It empowers Government to fence any land that they may think necessary to be fenced, and the cost of such fence shall be a first charge upon that land. On the Minister of Agriculture notifying the Registrar of Deeds of the fact that any land has been fenced by the Government, he must register the fact, and the charge thus created will take preference of any other mortgage which may then be in existence. Yearly repayments of the costs are arranged on the plan of instalments. An owner can, if he so wishes, contribute material or labour or transport towards the erection of such fence, which must be set off the cost of the fencing.

(*h*) Contributed by the Hon. J. F. Bird, Attorney-General,

The Minister of Agriculture is also empowered to fence any road, public or private, or any boundary of the Colony. Repairs to the fences when once made are to be borne by the owner of the land upon which the fence has been erected.

**East Coast Fever** (No. 8).—This Act amends Act No. 32, 1903, (i) and authorises the Minister of Agriculture to take any cattle from an area infected with East Coast fever and dispose of them for immediate slaughter, but the owner of the cattle is given the right to dispose of such cattle proposed to be taken under the Act if he does so within seven days of receiving notice of the Government's intention. The Act also sets forth a schedule of the rates to be paid by the Government for cattle taken under the powers conferred by the Act.

**Natal Law Society** (No. 10).—This Act incorporates the Natal Law Society and recognises it as a legal body. It defines the constitution and object of the Society, and also confers rights of supervision over the legal profession in Natal, and lays down rules for the guidance of advocates and attorneys. The Society has power under the Act to make application to have practising advocates and attorneys struck off the rolls by an Order of Court for unprofessional or unlawful practice, and has power to make regulations and bylaws for carrying out the powers thus given to them. It also exempts members of the Council from liability to any action or preceeding for libel, defamation, and slander in the *bonâ fide* execution of their duties as members of the Council.

**Dealers in Old Metals.**—No. 11 defines the term "old metals," and provides that from the taking effect of the Act, all dealers in old metal shall be compelled to take out a licence. It also provides that any old metal bought by a manufacturer shall be registered in a register to be kept on the premises, and that the metal so bought by a dealer shall not be smelted down or otherwise disposed of within a period of seven days of the date of purchase. No dealer is allowed to purchase from a person under the age of eighteen years. The Act also sets forth a schedule of the minimum weights that may be purchased by a dealer in old metal.

**Smoking by Youths** (No. 13).—No person under the age of sixteen years may smoke tobacco in any form. European police officers have the right to take any tobacco, pipes, cigars, cigarettes, etc., found in the possession of any such person and confiscate the same. This power is also given to teachers in schools. No person shall be allowed to supply, sell or give any tobacco, etc., to a person under the age of sixteen years without a written order by the parent, guardian or employer of such person.

(i) See *supra*, p. 365.



**Tuberculosis.**—No. 14 amends Act No. 27, 1899, (*k*) by providing that cattle imported into Natal by sea must be accompanied by certificates given by qualified veterinary officers approved of by the Minister of Agriculture. Cattle imported by land are required to be placed in quarantine and tested for tuberculosis, and shall not be released from quarantine until receiving a certificate from a Government Veterinary Office. In the event of any such animal being affected with tuberculosis it shall not be removed alive from the quarantine station, but shall be destroyed there, provided that in the case of animals imported by sea, the owners may reshipe the same.

No. 15, to amend the Lung sickness Prevention Act, 1894, defines the words "owner" and "lung sickness." Inspectors may be appointed by the Minister. It repeals s. 8 of the principal Act, and makes a provision for the issue of a licence to keep an infected herd, and creates a penalty for removing them. It alters the law as to giving notice of an outbreak of lung sickness, and alters the schedule of compensation which is to be paid for animals.

**Master and Servants.**—No. 21 amends the Master and Servants Ordinance, No. 2, 1850, by bringing within the operation of the Act craftsmen or labourers.

**Police.**—No. 22 enables the Governor to place the Reserve Force of the Natal Police, or any portion of same, under the control of the Commandant of Militia.

**Registration.**—No. 23 amends Law No. 5, 1890, and Law No. 6, 1891, raising the duty to be paid on transfer of lands from 2 to 3 per cent.

**Indian Immigration.**—No. 24 amends Law No. 34, 1895, and the Immigration Trust Law of 1874, and Act No. 17, 1902, (*l*) as regards the constitution of the Indian Immigration Trust Board.

No. 25 amends Law No. 25, 1891, as to the appointment of medical officers for the purposes of the Indian Immigration Laws.

**Corporations.**—No. 26 gives certain powers to the Town Council of the City of Pietermaritzburg with regard to licences, buildings, and the laying-out of roads, in order to bring the law into line with that applicable to the Borough of Durban.

No. 27.—This Act establishes a Loan Fund for the purpose of promoting the occupation, cultivation, and improvement of agricultural and pastoral lands. The money voted for this purpose is to be kept by the Treasurer. The Loan Fund is to be controlled by a board consisting of five commissioners, appointed by the Governor, and a manager and certain other officers. It provides also for the making of a yearly statement and the keeping of books and accounts, and

(*k*) See *supra*, p. 352.

(*l*) See *supra*, p. 362.

audit. Advances from the fund are to be made to farmers and land-owners for the purpose of paying existing liabilities, irrigation, fencing, clearing, planting, building, and stock. No loan is to be made except upon the security of land held by other tenure than leasehold. No loan shall be for a less amount than £50 or for a greater amount than £1,500. The rate of interest to be paid on these loans is to be fixed by the Governor. The loans are to be of two kinds, either a loan for a limited period not exceeding five years, repayable at the end of that period, or an instalment loan for a period not exceeding thirty-five years, repayable by instalments during that period. It sets forth the form of mortgage and gives the Governor certain rights of foreclosure. All securities are to be in favour of the board, and no advance is to be handed over before the security is complete. No person having any pecuniary interest in land tendered as security for a loan shall in any way be connected with the management of the loan fund. The Governor is empowered to make regulations as regards the meetings of the board, the duties of commissioners and officers, the forms to be used, the fees to be charged, and all matters concerning the proper carrying out of the Act.

No. 28 amends the Agricultural Development Act, 1904, (*m*) by providing for transfer of land in freehold after fifteen years, subject to conditions of payment and occupation.

**Ostriches.**—No. 29 forbids the exportation of any ostrich or ostrich egg to any place other than a county of South Africa having similar legislation, unless in the case of eggs the contents shall have been removed or rendered unfertile.

**Quit Rent.**—No. 31 fixes the quit rents payable on lands in the Northern Districts and brings the law into conformity with that applicable to quit rents on land in the rest of Natal.

**Naval Volunteers.**—No. 33 provides for establishing a force of Naval Volunteers. The force is to form a division of the Royal Naval Volunteer Reserve, and shall be liable to serve outside the territorial limits of the Colony and to be subject when on actual service or serving on any of his Majesty's ships, to Imperial Statutes relating to naval discipline, and Admiralty regulations. The rates of pension, compensation, and gratuities to be paid in case of death or injury on active service is to be the same as that paid to members of the Colonial Militia. The expenditure in connection with the Act is to be defrayed from the annual contribution to his Majesty's Navy under Act No. 5, 1903. (*n*)

(*m*) See *supra*, p. 368.

(*n*) See *supra*, p. 363.

### 3. ORANGE RIVER COLONY.

1901 (*a*)      Proclamations—High Commissioner's and  
Administrator's—22.

**Defaced Coin.**—No. 3 (High Commissioner's) is similar to the Proclamation Transvaal No. 15. (*b*)

**Insolvency.**—By No. 4 (Deputy-Administrator's) the Laws of the late Orange Free State relating to insolvency, and the estates of minors, lunatics, deceased and absent persons (including the Law of Tutors and Curators), are until further proclamation to be observed. The powers, functions, and duties of the High Court are vested in the Deputy-Administrator.

**Oath of Allegiance.**—No. 5 (High Commissioner's) contains provisions similar to No. 5 of 1901, proclaimed in the Transvaal.

**Resident Magistrates.**—No. 7 (*d*) (High Commissioner's) provides for the establishment of Courts of resident magistrates in addition to Courts already established in the Orange River Colony. Such Courts within their district are to have the power, privileges, and jurisdiction of the late Courts of Landdrosts, provided that in civil causes the defendant is personally served within the jurisdiction, and that the cause of action arose after May 28, 1900. Sentences above £10 fine, three months' imprisonment, or fifteen lashes must be confirmed by the Deputy-Administrator. The Deputy-Administrator is to have power to review civil proceedings where the amount in issue exceeds £20 or involves a claim exceeding £50. All interdicts are to be confirmed by the Deputy-Administrator. Assistant magistrates may be appointed. A Special Criminal Court of three judges is established at Bloemfontein, with unlimited jurisdiction in criminal matters. Sentence of death cannot be executed until confirmed by the Administrator. Certain minor sentences exceeding £100 fine, one year's imprisonment, or twenty-five lashes must be submitted to the Deputy-Administrator for confirmation. Magistrates are to hold preliminary inquiries. The Courts are to administer the laws of the Colony according to the practice, procedure, and rules of

(*a*) Contributed by Israel Davis, Esq.

(*b*) See *infra*, p. 429.

(*d*) See *infra*, p. 382.



evidence of Landdrosts' Courts. Pleadings and procedure to be in the English language. A form of indictment is provided. Certain persons are to be entitled to practise in the Courts. The magistrates are to have the powers formerly vested in Landdrosts under Law No. 26 of 1899 and relating to marriages.

**Fugitive Offenders.**—No. 9 (High Commissioner's) adopts Part II. of the Imperial Fugitive Offenders Act, 1881. (*e*)

**Rinderpest.**—Nos. 10 and 15 to 18 (Deputy-Administrator's) contain regulations and prohibitions as to the introduction of cattle from Basutoland and other places.

**Avoiding Transactions.**—No. 11 (Administrator's) is similar in terms to Transvaal No. 26 of 1901. (*f*)

**Sale of Stock.**—No. 12 (Deputy-Administrator's) regulates the sale of horses, mules, cattle, sheep or goats. Stringent regulations are imposed to prevent theft and to facilitate the detection of thieves and the recovery of stolen stock. All purchases except at auctions held by licensed persons are to be registered. No stock is to be removed from the district without leave. Magistrates are vested with extensive powers of inquiry, search, arrest, and impounding stock.

**Contracts.**—No. 13 (Deputy-Administrator's) is similar to Transvaal No. 12 of 1901. (*g*)

**Inquests.**—No. 14 (Deputy-Administrator's) follows the regulations of Transvaal No. 10 of 1901 (*h*), with the exception of some differences of which the most important is that justices of the peace are to hold a preliminary inquiry if a dead body has been found within their jurisdiction more than ten miles from a Court of resident magistrate.

**Liquor Law.**—Nos. 19 and 22 (Deputy-Administrator's) prohibit the brewing or distilling of beer in the Colony except in established breweries, until a date to be notified.

## 1902 (*i*)

Ordinances published—33.

**Roman-Dutch Law.**—No. 3 provides that the Common Law in the Colony shall remain the Roman-Dutch, so far as it has been introduced into and is applicable to South Africa; and that the Statute Law of the Orange Free State shall continue in full force, unless amended or repealed by this and subsequent Ordinances. Further, the Act gives the meaning of certain terms, the mode of the promulgation of bylaws made by the Governor or Lieutenant-Governor, and of Ordinances, and contains certain provisions as to the repeal of laws.

(*e*) 44 & 45 Vict. c. 69.

(*g*) See *infra*, p. 429.

(*f*) See *infra*, p. 429.

(*h*) See *infra*, pp. 428-429.

(*i*) Contributed by W. R. Bisschop, Esq., LL.D.

**High Court.**—No. 4(j) re-establishes the High Court of the Orange River Colony at Bloemfontein, which shall have jurisdiction in all matters and causes, whether civil or criminal, arising in the Colony, or having arisen in the late Orange Free State prior to the annexation thereof, and over all persons whomsoever residing and being within the Colony. The judges shall hold office during good behaviour, and one judge by himself shall be competent to hear cases and give decisions, but in case there are two judges sitting who differ in opinion, the case shall be removed to the Transvaal Supreme Court for decision. It provides for the admission of barristers, solicitors, notaries, and conveyancers. Trial in criminal cases shall be before a judge and nine jurymen. The circuit system shall be maintained, while all proceedings in the High Court and the Circuit Courts shall be in English, although in cases of necessity the use of the Dutch language shall be allowed. The Court shall continue to be a Court of Review for the proceedings of all inferior Courts, and a Court of Appeal in criminal cases from the Courts of resident magistrates. Appeal from the High Court shall lie, in civil cases, to the Supreme Court of the Transvaal and to the Privy Council. In criminal cases leave to appeal from the High Court and the Circuit Courts to the Supreme Court of the Transvaal may be applied for in cases of irregularity or illegality, or may be reserved by the Courts themselves. The rules of the High Court shall be made by the judges and published in the *Gazette*. The High Court and Circuit Courts of the late Orange Free State are abolished at the moment these Courts of the Orange River Colony are opened.

**Alteration and Amending of the Common Law.**—No. 5 enacts that the law administered by the Supreme Court of the Cape Colony having reference to questions of fire, life, and marine insurance, stoppage *in transitu*, and bills of lading shall be the law to be administered by the High Court of the Orange River Colony. Civil imprisonment for non-payment or non-satisfaction of any judgment or decree granted or issued by the High Court shall be abolished, and no contract shall any longer be void or voidable by reason of *læsio enormis*.

**Justices of the Peace.**—No. 6 provides for the reappointment of justices of the peace, who shall hold office during pleasure, and whose duty it will be to preserve the public peace with the assistance of constables, officers, and others of his Majesty's subjects; to inquire into all crimes committed within their jurisdiction; to summon and examine witnesses upon their oath; and to apprehend all criminals and offenders of the law. Special justices of the peace shall be appointed by the Lieutenant-Governor with a limited jurisdiction in certain cases of assault and theft and contravention of any municipal regulations. The

form of procedure in the Courts of special justices of the peace shall be the same as that of the Courts of resident magistrates. The justices shall have power to transmit cases to the Courts of the resident magistrates and to imprison certain accused persons who are either accused, or committed for trial, or convicted. Every case tried under this summary jurisdiction shall be submitted for review to the High Court.

**Resident Magistrates.**—No. 7 (*k*) amends the High Commissioner's Ordinance No. 7 of 1901 (*l*) and consolidates the law relative to Courts of resident magistrates. These Courts shall include those of additional and assistant resident magistrates and periodical Courts of resident magistrates.

**Sheriffs.**—No. 9 contains similar provisions to Proclamation Transvaal No. 17 of 1902 (*m*).

**Taxation of Costs.**—No. 10 provides for the taxation of bills of costs in judicial proceedings. Any bill of costs may within a limited time be brought for revision from the Taxing Office of the High Court or of any Circuit Court to the High Court or a judge in chambers.

**Law of Evidence.**—No. 11 (*n*) contains similar provisions to Proclamation Transvaal No. 16 of 1902 (*o*), but refers in all cases not provided for to the rules of evidence as administered by the Supreme Court of the Cape of Good Hope, as was the former rule in the Transvaal.

**Criminal Procedure.**—No. 12 regulates the mode of procedure in criminal cases. Prosecution shall take place in the name of the King, at the instance of the Attorney-General or the private party injured or directly interested, if the Attorney-General decline to prosecute. All prosecutions shall be barred after the lapse of twenty years from the time when they were committed, with the exception of prosecutions for murder.

Warrants for apprehension of alleged offenders shall be granted by a judge of the High Court, a resident magistrate, or a justice of the peace, on the written application of the Attorney-General. The warrants are to be executed by the law officers within the jurisdiction of those who granted them, and they shall have the right to search. Private persons shall have the right to arrest in certain cases. In every case when a crime or offence has been committed of a serious nature, a preparatory examination shall be held before a resident magistrate, during which the prisoner shall be entitled to have the assistance of a legal adviser and to have his own witness heard. If it shall appear to the magistrate that sufficient grounds exist for doing so, he shall commit the alleged offender for trial. A copy

(*k*) See *infra*, pp. 398, 404.

(*m*) See *infra*, p. 437.

(*l*) See *supra*, p. 379.

(*n*) See *infra*, p. 404.

(*o*) See *infra*, p. 437.



of such preparatory examination shall forthwith be transmitted to the Attorney-General. Every prisoner thus committed in respect of crimes stated on the face of the warrant of commitment as being not capital shall be entitled to bail, the amount to be determined by the magistrate; while the High Court or any judge of the High Court shall have the power to allow bail in all cases. The prisoner to be brought to trial after the lapse of twenty-one days in Bloemfontein, or thirty-one days in the district of any Circuit Court, but not later than the second session of the Court after the date of his commitment.

Rules are laid down for the drawing of indictments for different crimes, amending the same, and the finding of certain verdicts upon certain facts as described in the indictments. Different forms are appended.

**Arms and Ammunition.**—No. 15 (*p*) contains similar provisions to Ordinance Transvaal No. 13 of 1902. (*q*)

**Juries.**—No. 17 (*r*) amends Chapter VIII. of the Law Book regarding juries in criminal cases, and provides similarly to Ordinance Transvaal No. 10 of 1902. (*s*)

**Protection of Cattle.**—No. 18 contains similar provisions to Ordinance Transvaal No. 35 of 1902. (*t*)

**Admission of Banks.**—No. 20 removes the restrictions imposed by Chapter CII. of the Law Book on the admission of foreign banks within the Colony. It allows any bank to carry on banking business in any part of the Colony, provided it has obtained permission from the Lieutenant-Governor, taken out a licence required by law, and—in case of a bank having its head office outside the Colony—has lodged with the Colonial Secretary a power of attorney appointing a chief agent in the Colony.

**Police Offences.**—No. 21 consolidates and amends the laws relating to the suppression and punishment of offences against public property, public health, peace, religion, decency, and safety, and of acts causing hindrance, obstruction, and nuisance. It provides against the keeping and visiting of gambling houses, against Sunday trading, and Sunday entertainments. There are police provisions applicable to special localities like cities, towns, villages, communities, and proclaimed diggings. It also contains general police provisions applicable throughout the Colony against improper and negligent handling of horses, and vehicles, trespassing, slaughtering animals, and betting in public places, drunkenness, and the use of threatening or abusive language.

(*p*) See *infra*, p. 411.

(*r*) See *infra*, p. 403.

(*q*) See *infra*, pp. 439-440.

(*s*) See *infra*, p. 437.

(*t*) See *infra*, p. 444.

Miscellaneous provisions are inserted for the inspection of butchers' shambles and slaughter-houses, premises of wine and spirit dealers who are suspected of selling at unlawful hours or on prohibited days or without a licence, etc. The offences shall be tried by a resident magistrate, or in certain cases by a justice of the peace.

**Land Settlements.**—No. 22 institutes the Land Settlement Board of the Orange River Colony, who, with the approval of the Lieutenant-Governor, shall lease or sell Crown lands within the Colony to such applicants as shall appear to them most suitable as occupants thereof, while the Lieutenant-Governor shall be allowed to allot particular portions of land to applicants who have rendered public service. Every lease shall be granted for a term of five years at a rent equal to 5 per cent. of the purchase price of the land, and upon conditions that the lessee shall personally occupy and cultivate and not hypothecate the land, and comply with the further terms set out in the Ordinance. The Lieutenant-Governor shall have power to make advances to the lessee for permanent improvements on certain conditions and terms of repayment. In case of sale the purchase price shall be payable in instalments, and after payment in full the purchaser shall receive a grant on perpetual quit-rent; the conditions of occupation, cultivation, receipts and repayments of loans shall be the same as those of leases. Rights to minerals are in all cases reserved by the Crown. The sums payable for rent and as purchase money are set out in schedules.

**Central South African Railways.**—No. 23 gives power to the Lieutenant-Governor from time to time to make bylaws regulating the management and working of these railways, and provides for the penalties against any contravention of such bylaws. (*u*)

**National Bank.**—No. 24 changes the name of the National Bank into that of "the National Bank of the Orange River Colony, Limited," and provides for its continued incorporation and existence under the same articles of association as before.

**Martial Law.**—No. 25 withdraws martial law from the Colony and contains similar provisions to Ordinance Transvaal No. 38 of 1902. (*x*)

**Concentration Camps.**—No. 26 contains similar provisions to Ordinance Transvaal No. 39 of 1902. (*y*)

**Legalising Marriages.**—No. 27 provides for the legalisation of marriages solemnised since May 24, 1900, by landdrosts, and since February 28, 1902, by marriage officers appointed by the late Government of the late Orange Free State.

**Bills of Exchange.**—No. 28, for the consolidation, amending, and declaring the law relating to bills of exchange, cheques, and promissory

(*u*) See Ordinance Transvaal No. 25 of 1902, *infra*, p. 444.

(*x*) See *infra*, p. 442.

(*y*) See *infra*, p. 443.

notes, contains the same provisions as the Bills of Exchange Proclamation of the Transvaal. (z)

**Stamp Duties.**—No. 29 provides for the imposing of stamp duties on leases, which are set out in a schedule.

**Public Holidays.**—No. 31 enables the Lieutenant-Governor to proclaim public holidays.

**Deeds Registry.**—No. 33, (a) regarding the Deeds Office and the registration of deeds, adopts the provisions of the Proclamation Transvaal No. 10 of 1902. (b)

### 1903 (c)

Ordinances passed—53.

**Naturalisation.**—No. 1 (d) provides rules for the naturalisation of aliens on the lines of Ordinance Transvaal No. 46 of 1902. (e)

**Natives.**—No. 2 provides for the exemption of certain deserving natives from the operation of the existing Law relating to passes on the lines of Ordinance Transvaal No. 28 of 1902. (f)

No. 7 regulates the sentences of lashes, and limits the number of strokes which may be awarded by the Courts or under the prison regulations. (g)

**Justices of the Peace.**—No. 6 extends the jurisdiction of special justices of the peace in cases of contravention of such laws and proclamations as are set out in the schedule to the Ordinance, and which shall have occurred within the area of their jurisdiction.

**South African Constabulary.**—No. 20 vests all the jurisdiction, powers, and duties heretofore vested in and imposed upon the municipal police in the Colony in the South African Constabulary.

**Railway Police.**—No. 23 contains similar provisions to Railway Police Ordinance Transvaal No. 18 of 1903, (h) but vests the right of appointing constables in the Lieutenant-Governor (on the application of the Railway Commissioner) and not in the resident magistrates, as in the Transvaal.

**Suppression of Brothels and Immorality.**—No. 11 renders the keeping of a brothel a criminal offence, and makes provisions for the prohibition of the immoral exploiting of women for the purpose of gain. Penalties are provided against the intercourse of white women and natives. (i)

**Prisons.**—No. 3 abolishes Chapter XII. of the Law Book regarding

(z) See No. 11 of 1902, *infra*, p. 433.

(a) See *infra*, pp. 388, 394.

(b) See *infra*, p. 432.

(c) Contributed by W. R. Bisschop, Esq., LL.D.

(d) See *infra*, p. 393.

(e) See *infra*, p. 443.

(f) See *infra*, p. 433.

(g) Cf. Ordinance O.R.C. No. 3 of 1903, *infra*, pp. 335-336.

(h) See *infra*, p. 450.

(i) Cf. Ordinance Transvaal No. 46 of 1903, *infra*, p. 456.



punishments, and regulates the prison system in the Colony. It creates a Director and an Assistant Director of Prisons, who shall be visiting magistrates of every prison in the Colony with powers of jurisdiction as possessed by resident magistrates in regard to offences committed by officers and prisoners. The gaolers and other officers of every prison (with the exception of Bloemfontein) and the discipline in any prison shall be under the authority and supervision of the resident magistrates of the district, and such magistrate shall try all cases in which offences have been committed by any such officer or prisoner.

Special provisions are made for offences committed by prisoners in or outside the prison and by persons other than prisoners, mainly consisting of aid given to prisoners for escape.

The rule of the late Orange Free State that convicts should not be employed in working for officials or private persons is abolished; and it is now provided that, subject to the regulations to be framed by the Lieutenant-Governor in Council for fixing the conditions upon which prisoners may be employed by public bodies or private persons, any resident magistrate may at his discretion or by order of the Director of Prisons contract with any public body, company, or individual for the employment of persons sentenced to imprisonment with hard labour for three months or any less period. For the employment of persons sentenced to other terms of hard labour, the order or authority of the Colonial Secretary is required. Terms and conditions as to safe custody and maintenance shall be stipulated by the magistrate.

**Mining.**—No. 4 (*k*) provides for the granting of Mynpacht-briefs to prospectors on Government lands subject to the same provisions as those contained in Law No. 17 of 1899 regarding Mynpacht-briefs on private lands, and in so far amends Arts. 1 and 2 of Law No. 27 of 1894 regarding the prospecting, developing, and working of precious metals, precious stones, and minerals on Government lands.

**Liquor Licences.**—No. 8 (*l*) abolishes Chapter CVIII. of the Law Book regarding the liquor trade and its amending Laws of 1895, 1897, and 1898, and also Chapter CX. of the Law Book regarding clubs, as well as the Temporary Liquor Licensing Proclamation Orange River Colony No. 14 of 1902, and codifies the law regarding liquor licences on lines similar to those of the Liquor Ordinance Transvaal No. 32 of 1902. (*m*)

The Act describes the different licences which can be granted. Restriction of the number of licences has been provided by the stipulations that no wholesale or retail liquor licences shall be granted outside any town, village, or digging under Government control; that Licensing

(*k*) Repealed by No. 3 of 1904, *infra*, pp. 395-396.

(*l*) See *infra*, pp. 387, 399, 407, 410.

(*m*) See *infra*, p. 442.

Courts—either on their own accord or on objection being raised to the granting of any certificate for a new licence—shall decide whether the number of premises already licensed is sufficient for the requirements of the neighbourhood; that no more than one wholesale or retail or bottle liquor licence shall be held in any town, village, or digging by the same person.

The “local option” of the Transvaal Ordinance has not been taken over, but restrictions are made against the import of intoxicating liquor into the Colony without a permit, and also to a certain extent against the removal of liquor from one place to another in the Colony.

Prohibitions are enacted against the sale of intoxicating liquor to coloured persons, while provisions are made for a “black lists” to be kept by the resident magistrates.

The Law also provides penalties for the adulteration of liquors.

Offences against the Ordinance may be summarily tried by the resident magistrate of the district where the offences are committed.

No. 22 (*n*) amends the Liquor Licensing Ordinance of 1903 in a similar way as the Liquor Licensing Amendment Ordinance Transvaal No. 17 of 1903. (*o*)

**Incorporated Law Society.**—No. 9 repeals Chapter XX. of the Law Book and provides for the formation and constitution of the “Law Society of the Orange River Colony,” which shall take the place of the Orange Free State Law Society.

All duly admitted attorneys of the High Court and notaries public shall *ipso jure* be members of the society. Provisions are made for the payment of annual subscriptions, the constitution of the council and election of officers, the powers of the council, council meetings, the framing of bylaws, the articles of clerkship, and the procedure to be followed when the council shall be informed of any professional misconduct.

**Stamps and Licences.**—No. 10 (*p*) repeals Chapters LXV. and LXVI. of the Law Book regarding stamp duties and office fees, and the amending Laws regarding the same of 1896 and 1898, as well as Arts 1, 2, and 3 of Chapter CIII. regarding assurance companies.

Regulations are provided for the compulsory use of stamps on the documents set out in the schedule to the Act. Both stamped paper and adhesive stamps are admitted. The use of stamped paper or adhesive stamps shall be optional for bills of exchange or promissory notes, while special provisions are made for the stamping of notarial acts and policies of insurance.

All persons exercising a profession or trade, occupation, business, or

(*n*) Repealed by No. 10 of 1905 *infra*, p. 399.

(*o*) See *infra*, p. 444.

(*p*) See *infra*, p. 399.

calling as enumerated in Schedule C to the Act shall be obliged to take out a licence on *pæna* of a fine. The licence shall be for a year or half a year, and shall be taken out within twenty-one days after the commencement of such year or half-year. Trade licences are transferable by endorsement in the presence of the resident magistrate.

Assurance companies whereof the head office or place of business is not situated within the Colony, but which do business within the Colony, shall be required to deposit with the Colonial Treasurer securities to the value of £5000 in case of fire and accident assurance companies, and £10,000 in case of life assurance companies, provided that the income derived from such securities shall be received by the depositor.

**Fencing.**—No. 12 enacts that the members of the Fencing Commission mentioned in Chapter CXXIII. of the Law Book, shall be appointed by the Lieutenant-Governor with the advice of the Executive Council.

**Surveys.**—No. 16 repeals Chapter LVIII. of the Law Book regarding the Surveyor-General's Department and its amending Laws of 1892 and 1898, as well as the Proclamations Nos. 9 and 12 of 1902, and creates a Surveyor-General's office to fulfil the requirements of a Deeds Registry for landed property. (*q*) It provides for the appointment of a Surveyor-General, whose chief duty—among the duties set out—will be the examination of diagrams of farms, and the issuing of title deeds on diagrams found correct by him. It regulates the survey of all farms and divisions of farms in the Colony, and authorises the Surveyor-General to enter upon any lands for the purposes of making a survey.

The unit of measure of length—save in towns where the English foot has already been accepted—shall be the "Cape foot" as enacted by Act No. 9 of 1859 of the Colony of the Cape of Good Hope.

Examinations shall be instituted for land surveyors, but all persons admitted as Government land surveyors in Great Britain and Ireland or in any British possession shall be admitted as land surveyors in the Orange River Colony, on proving that they have passed an examination equivalent to those required to be passed in the Colony of the Cape of Good Hope.

No. 30 provides for the necessary measures for the survey of land required for railways, and the compensation to be paid for damage or hindrance caused thereby.

**Prohibited Degrees of Marriage.**—No. 31 repeals the provisions of Chapter XCI. of the Law Book, and again sets out the law in force in the late Orange Free State regarding the degrees of consanguinity and affinity which prohibit marriage, viz. limiting the prohibition of

(*q*) Cf. Ordinance No. 33 of 1902, *supra*, p. 385.



consanguinity (either by legitimate or illegitimate birth) to the third degree, and the fourth degree in exceptional cases, and limiting the prohibition of affinity to the direct line.

**Education.**—No. 27 (*r*) contains similar provisions to those of the Public Education Ordinance Transvaal No. 7 of 1903. (*s*) The authority for allowing free education is, however, vested in the Lieutenant-Governor solely, while registration of teachers shall be introduced when the supply of qualified and certificated teachers in the Colony shall in the opinion of the Government justify such a course.

**Vaccination.**—No. 29, whilst repealing Part II. of Law No. 31 of 1899, renders the vaccination of children compulsory, and regulates that every child born in the Colony shall be vaccinated within six months after its birth, and also that every child in the Colony shall be vaccinated or re-vaccinated within a period of six months after such child shall have reached the age of twelve years.

Special provisions are made for the vaccination or re-vaccination of all coloured children and the registration of their names.

**Animal Diseases.**—No. 13 (*t*) makes provision against the spread and for the stamping out of lung-sickness, milt-sickness, red water, rinderpest, glanders, and other infectious or contagious diseases amongst animals, by enacting measures for the prohibition of the importation of animals affected with any infectious or contagious diseases, their destruction or segregation, and the disposal of carcasses of infected animals. Regulations are made for the compensation of owners or occupiers of land, who shall have detained or kept separate such animals, at such rates as may be agreed upon by them with the resident magistrate, or in case of disagreement may be fixed by the Lieutenant-Governor.

Resident magistrates may declare areas infected, and forbid the removal of animals therefrom, while the Lieutenant-Governor may proclaim infected areas and prohibit the entry of such animals into the Colony from beyond the boundary.

Special provisions are made against the spread of glanders.

**Scab.**—No. 14 repeals Law No. 3 of 1893, and re-enacts measures against the spread of scab amongst sheep, goats, and other animals.

**Brands.**—No. 15 regulates the registration of brands by any owner of stock in the Colony, and authorises the Lieutenant-Governor to make, amend, alter, or repeal such regulations as may be necessary in pursuance of and for the proper carrying out of the provisions of this Ordinance.

**Rabies.**—No. 17 makes rules for the prevention of rabies amongst dogs within the Colony.

**Coal Tax.**—No. 25 (*u*) imposes a tax of 3*d.* per ton upon all coal

(*r*) See *infra*, p. 402.

(*t*) See *infra*, p. 408.

(*s*) See *infra*, p. 446.

(*u*) See *infra*, p. 410.

mined and sold from land other than Crown land within the Colony, to be payable by the owner of the mine from which such coal has been mined to the resident magistrate or civil commissioner of the district in which such mine is situated.

**Excise.**—No. 26 imposes a duty of 4*d.* per imperial gallon on all beer brewed within the Colony or imported thereinto from any part of the Customs Union, and extends the provisions of Law No. 18 of 1897, as amended by Ordinance No. 14 of 1902, to any such beer and a duty imposed thereon.

**Customs.**—No. 34 (*x*) is a Consolidation Act ratifying the Customs Convention between the South African Colonies and makes provisions similar to those of the Customs Union and Tariff Amendment Ordinance Transvaal No. 41 of 1903. (*y*) It regulates the levying and collecting of the duties, thereby repealing the Customs Law of the late Orange Free State (Chapter LXIII of the Law Book) and the Amending Acts of 1896 and 1898.

**Burial Grounds.**—No. 5 provides for the enclosure and maintenance as burial grounds for certain of the British and Boer forces who died from wounds or otherwise <sup>in</sup> the late war on the lines of Proclamation Transvaal No. 20 of 1902 (*try*)

**Guarantee Fund.**—No. 19 establishes a guarantee fund in security for the fidelity of officers of the public service of the Colony.

**Military Manœuvres.**—No. 28 regulates the military manœuvres to be authorized by the Lieutenant-Governor in Council within specified limits and within a specified period of the year not exceeding three months.

**Bloemfontein.**—No. 25 (*a*) repeals Chapter LXXXV. of the Law Book and its amending Law of 1899, together with Art. 68 of Chapter LXXXIV. of the Law Book and Ordinance Orange River Colony No. 30 of 1902, and codifies the provisions for the municipal government of Bloemfontein.

## 1904 (*a*<sup>1</sup>)

## Ordinances passed—25.

**Medicine, Dentistry, and Pharmacy.**—No. 1 (*b*) contains—*mutatis mutandis*—similar provisions as the Medical, Dental, and Pharmacy Ordinance Transvaal No. 29 of 1904. (*c*).

**Administration of Justice.**—No. 13 amends the Administration of Justice Ordinance Orange River Colony No. 4 of 1902. (*d*). The

(*x*) See *infra*, p. 407.

(*y*) See *infra*, p. 450.

(*z*) See *infra*, p. 433.

(*a*) See *infra*, p. 393, and Consolidating Act, No. 31 of 1907, *infra*, p. 412.

(*a*<sup>1</sup>) Contributed by W. R. Bisschop, Esq., LL.D.

(*b*) See *infra*, p. 410.

(*c*) See *infra*, p. 460.

(*d*) See *supra*, p. 381.

number of judges of the High Court shall not be less than three, but the Lieutenant-Governor shall have power to increase their number. Two judges shall form a quorum, one judge to act during vacation. In case of difference of opinion the Court's decision shall not be given until three judges are present.

Rules are laid down for the admission of attorneys.

The High Court to act as Court of Appeal, in civil cases, to Circuit Courts, and in all criminal cases from the superior Courts of the Colony. Rules are laid down for the procedure in case of such appeals and also for appeals from the High Court to the Privy Council. Lastly the powers are defined of the High Court in case of appeals in criminal cases.

**Juvenile Offenders.**—No. 5 provides for the removal to reformatories outside the Orange River Colony of juvenile offenders, and authorises the Lieutenant-Governor to warrant under the hand of the Attorney-General the removal of any male offender under the age of sixteen to the Cape Colony in order to be detained there in any of the reformatory institutions established there under the Reformatory Institutions Acts (Cape Colony) of 1879 and 1892.

The Lieutenant-Governor is further authorised, before the expiration of the sentence, to direct that such juvenile offender shall be apprenticed within the Orange River Colony to any useful calling or occupation, the contract of apprenticeship to be entered into before a resident magistrate. The period of apprenticeship shall be either for the time of the unexpired sentence or—with the consent of any parent or guardian—until the offender shall have reached the age of twenty-one years.

Similar apprenticeship can be directed by the Lieutenant-Governor, with the approval of the Chief Justice, regarding criminal offenders who have reached at the time of their sentence the age of sixteen but not yet the age of twenty-one years, and who have been sentenced to imprisonment for a period of not longer than three months. The direction must be given within three weeks, and the term of apprenticeship shall be not longer than four years.

The resident magistrate shall have to inquire into the fitness of the master and into the provisions of the contract, while in case of disobedience or misconduct on the part of the apprentice, the contract may be cancelled and the offender shall have to undergo the whole or part of his original sentence.

**Imprisonment.**—No. 16 empowers magistrates to inflict imprisonment with or without hard labour for a period not exceeding six months in default of payment of fines, and to pass alternative sentences to that effect.

The same may be done by any special justice of the peace in the



case of municipal regulations, provided that such imprisonment shall not exceed a period of fourteen days. Special justices of the peace are further empowered to sentence offenders for breaches of the provisions of Part II. of Chapter CXXXIII. of the Law Book, and they shall have jurisdiction under s. 15 of the Prisons Ordinance, 1903. (*e*)

No. 17 (*f*) contains similar provisions to the Prisoners' Detention Ordinance Transvaal No. 36 of 1904, (*g*) with the omission of the power given to the Lieutenant-Governor to remove prisoners from the Colony of the Transvaal to another Colony or territory for imprisonment or detention.

**Master and Servant.**—No. 7 repeals Chapter CXI. of the Law Book and regulates afresh the relations between masters and servants in the Orange River Colony. Parts I. and II. regard white servants, their contracts of service and their rates of wages. Such contracts shall not be for less than one month, nor—if made outside the Colony—made in any other way except in writing and recorded by a resident magistrate within the Colony, provided that such contract shall not be for any period exceeding three years from the date of arrival of the contracting servant within the Colony. Contracts made in British possessions or other foreign States not in Europe must moreover be made before a magistrate or any other competent authority, or before any British Consul.

Penalties are set out for inducing servants to leave their master's service or the attempt thereto—so frequently committed; for using violent obstruction in order to prevent servants from working or from accepting service, or to force them to enter any club or association, or for violently obstructing another on account of his not belonging to a club or association, or of his refusing to comply with any rules of such club or association, or for violently interfering with the master's freedom of regulating the employment of his servants.

Unions of workmen and masters are admitted, in order that they may consult each other regarding the common rate of wages or the fixing of a minimum rate of wages, or the number of hours of work which they shall require.

A master shall not be bound to give a character but is bound not to give a false one, and penalties are provided for giving or using false characters, or for withholding wages. Magistrates may give judgment for wages due when they punish a master for unlawfully withholding the same. No fine paid or imprisonment undergone by a servant shall cancel the contract, but such cancellation may be asked from the Court in case of conviction of either servant or master.

(*e*) See *supra*, pp. 385-386.

(*f*) See *infra*, p. 404.

(*g*) See *infra*, p. 458.

Part II. treats of offences committed by white servants and their punishments.

Part III. provides for the contracts between masters and black servants. No contract for either husband or wife or both shall last longer than two years, and written contracts for over one year shall be signed in presence of a magistrate. A father can make a contract for his minor children with certain provisions, but no services shall be required from the wife or children on account merely of their residing on the ground of their husband's master. Death of husband or father dissolves the contracts of wife and children after one month from his death.

The offences are set out of which coloured servants can be guilty and their punishments.

Part IV. contains miscellaneous provisions regarding the procedure in case of prosecution of servants, either white or coloured, the jurisdiction of the Court of resident magistrates, and justices of the peace, the obligation of the servant to return to work after having expiated his offence, and the punishments for the servant's desertion or unlawful absence.

**Municipalities.**—No. 6 repeals Chapter LXXXIV. of the Law Book and Law 1 of 1893, and amends the law relating to municipalities. It provides for the continuation of the constitution of existing municipalities and the establishment by proclamation of the Lieutenant-Governor of new municipalities, either on petition being presented by twenty-five householders or without such presentation. The provisions are set out which shall apply to the newly constituted municipalities, and to the manner in which the first election of councillors in them shall take place. The Ordinance further contains the rules regarding all municipalities as to the qualification of councillors and their election, of voters and the voters' rolls, and the duties of mayor and officers, and the proceedings of the council. As to the making of valuations, certain provisions of the Bloemfontein Municipal Ordinance Orange River Colony No. 25 of 1903 (*h*) shall apply.

Municipal property may be disposed of, if the council of the municipality has decided so to do by a majority of three-fourths of the full number of members of the council, and if such resolution has been sanctioned by the Lieutenant-Governor and has been confirmed by a voters' meeting.

The revenues of the council shall consist of rates, quit-rents, licence moneys, taxes on natives, fines, and other rents, fees, and charges. Ample provisions are made regarding the assessment and recovery of moneys due to the council. Powers are given to the council to issue loans.

(*h*) See *supra*, p. 390.

The powers of the councils are set out more particularly regarding the tramways, the native locations, and the licences for vehicles, as well as to their being entitled to make new regulations and alter existing ones.

The Ordinance ends with enumerating the penalties for contravention of its provisions or the regulations thereunder.

**Villages.**—No. 12 (*i*) provides for the proper management of villages and other communities not being municipalities, and repeals Part I. of Chapter LXXXIV. of the Law Book and Proclamation No. 8 of 1902. Regulations are laid down for the election of the members of boards of management, their powers, and the purposes for which the boards may make regulations, as well as the manner in which such regulations may be enforced.

**Local Loans.**—No. 9 provides rules for the granting of loans by the Lieutenant-Governor to local authorities out of the funds voted by the Legislative Council for the purposes set out in the Ordinance. The purpose for which the loan is required shall be stated in each application for a grant, and such grant shall not be taken into consideration until the Treasurer shall have been satisfied as to the sufficiency of the security for its repayment and shall have given a certificate in favour of the loan. Every loan shall be a charge upon the rates, revenues, and land of the local authority to whom it is granted, carry 5 per cent. interest and be redeemable in instalments within a period not exceeding thirty years, the first instalment to be due within a period not exceeding five years. The grant of loans shall be published in the *Gazette* and be enforceable in manner provided in the Ordinance.

Special provisions are made for the repayment of loans which are granted upon other security than that of rates. Local authorities remain subject to the provisions of Chapter LXXXVIII. of the Law Book regarding the collection of debts contracted by public bodies.

**Municipal Loans.**—No. 21 provides for the grant of a loan not exceeding the sum of £100,000 to the Municipality of Bloemfontein for the improvement of the watercourse running through the city and known as "Bloem Spruit," under the Local Loans Ordinance No. 9 of 1904. (*h*)

**Registration of Deeds.**—No. 20 amends the Deeds Registry Ordinance No. 33 of 1902 (*l*) in respect of ss. 8 and 20 of that Ordinance and the admission for registration of foreign powers of attorney.

**Wills and Powers of Attorney.**—No. 11 repeals Chapters XCIII. and CV. of the Law Book and brings the law relating to the execution of wills in accordance with the English system as it prevails in the Cape Colony and the other South African Colonies. A notarial will is no

(i) See *infra*, p. 400.

(h) See *supra*.

(l) See *supra*, p. 335.



longer to be invalid for not being read over to the testator in the presence of the witnesses to the will.

The same equalisation is enacted regarding the attesting of powers of attorney in this Colony. Rules are laid down for the proper attestation of powers of attorney and the registration of general powers in the Deeds Office.

**Survey.**—No. 19 makes provisions to facilitate a trigonometrical survey of the Colony and to provide for the preservation of trigonometrical beacons. (*m*)

**Mining of Precious Metals** (No. 3). (*n*)—A Department of Mines is created. The head of the Department and the inspectors of mines shall from time to time be appointed by the Lieutenant-Governor, while the areas of the districts within which these inspectors shall respectively have authority shall be defined and altered by the head of the Department. Claim inspectors shall be appointed by the Lieutenant-Governor, and regulations shall be made by him with regard to their duties.

Prospecting without licences shall be allowed to every landowner on his own land, provided that he gives notice of his intention so to do to the resident magistrate. All other persons shall require a licence from the magistrate before being entitled to prospect, the licence to state the period and the area for which the same shall be granted. In order to prospect on Crown lands a grant from the Lieutenant-Governor shall be required, which prospecting rights shall cease on the proclamation of the particular area as a public digging.

Notice to the magistrate of discovery of precious metals on unproclaimed land by the discoverer shall be compulsory.

Rights and duties of the prospector are set out in the Ordinance.

On receiving a report of the head of the Mines Department that precious metals have been found on private land, farm, or Crown land which has been prospected, the Lieutenant-Governor is entitled to proclaim such land or farm a public digging. In order to advise him as to the payability of the discovered precious metals the Lieutenant-Governor shall be entitled from time to time to appoint a board of not less than five members.

Full provisions are made for protection of discoverer's and owner's rights, of the area of reef claims as well as of alluvial claims, the right of Mynpachten and the particulars of licences, transfer, division, and other rights connected with a Mynpacht, the discoverer's and the owner's rights on alluvial fields on private and Crown lands, and the owner's rights to reserve areas for himself, and the particulars thereof.

(*m*) Cf. the Trigonometrical Survey Ordinance Transvaal No. 11 of 1903, see *infra*, p. 445.

(*n*) See *infra*, pp. 397, 412.

Provisions are also made for the resumption of ownership, of alienated Crown lands, of the throwing open of private lands, and the sale of Crown lands.

Opportunity is made for acquiring mutual rights in the issue of claims and licences, and of pegging in respect of land which is proclaimed a public digging, while particulars are set out of the persons who will be entitled to peg, and of the issue of further licences in case a whole area is not pegged off, or of the refunding of licence money where too many licences have been issued.

The Ordinance provides regulations regarding alluvial deposits discovered on reef claims and the rights of registered holders to such claims. Also provisions are made for the erection of machinery and the rights of way to mining property, the erection of buildings by the Government, the rights of the Government to revoke the proclamation of a public digging, and the expropriation of claims on such revocation. Regulations are made for the deposit of plans of claims, regarding the transfer of claims and the number of claims which any person is entitled to hold, the number of claims to be acquired by transfer to be unlimited. Provisions are made, in case of forfeiture of claims, regarding the rights to construct roads and water-ways on public diggings.

A Diggers Committee may be appointed by the Lieutenant-Governor for any alluvial digging, and the rights of such committee are defined. Special provisions are made for the farm Lindequesfontein. The Ordinance makes further ample provisions regarding the surface and water rights of the owner, and the respective rights of the holder of a water right and a mine owner. Further provisions are made with regard to rights to wood, as well as regarding the special registration of Mynpachten, or claims, or particulars thereof, together with any mining, water rights, rights of way, rights of leading water, machinery, stands, or any other rights or servitudes which may be held in connection with the Mynpacht.

Further provisions are made regarding the trading in precious metals, which shall only be in the hands of licensed dealers in unwrought precious metal, while penalties are imposed for the unlawful possession of unwrought precious metal.

The Ordinance ends with the regulations regarding stands for mining purposes and the fees payable therefor, while the further fees to be payable in stamps are set out in the second schedule.

The following laws are repealed :—

Chapter LXX. and Chapter CXV. of the Law Book, Law 27 of 1894, Law 13 of 1896, Law 20 of 1897, Law 10 of 1898, Law 17 of 1899, and Ordinance No. 4 of 1903. (o)

**Mining of Precious Stones.**—No. 4 (*p*) makes similar provisions for the mining of precious stones as are contained in the foregoing Ordinance and the Precious Stones Ordinance Transvaal No. 66 of 1903. (*q*)

**Mining.**—No. 8 regulates the mining of base metals and minerals. The owner has a right to prospect without licence on his own property but every other white person is obliged to obtain a licence together with the owner's permission. In order to prospect on Crown lands the grant of a licence is necessary from the Lieutenant-Governor, and—in case such Crown land is leased—also a permission from the lessee. Discoveries must be notified to the Inspector of Mines or the resident magistrate.

It is prohibited to mine on proclaimed areas or in places excluded by the Lieutenant-Governor, who may make regulations for the proper carrying out of the mining operations.

The Lieutenant-Governor may authorise the collection of a tax on the value of any base metal or mineral won.

The rules regarding statistics, the duties of officials, the records to be kept by the magistrates, the appointment of officials, the publicity of the magistrates' records and the inspection of all books kept at the mine, as well as the jurisdiction of the resident magistrates are similar to the provisions of the above-mentioned Ordinance regarding the mining of precious metals.

**Companies.**—No. 24 repeals Article 2 of Chapter C. of the Law Book and amends the law with reference to companies registered with limited liability in regard to their formation and their memorandum of association, and provides for the registration of foreign companies. The term "foreign companies" shall comprise any company, association, or partnership duly incorporated in accordance with the laws of any foreign company under a definite name, whether limited or unlimited, which will be engaged in any business or dealings in the Orange River Colony, either by directors appointed for such purpose or by a managing director, manager, secretary, or agent on behalf of such company. Companies of which the head office is within the Colony, and also banking, assurance, and savings bank businesses are excluded.

1905 (*r*)

Ordinances passed—36.

**Admitted Agents.**—No. 2 confers on persons who passed the examination for law agents in the late Orange Free State, but were never admitted to practice, the privilege to practise in any Court of the resident magistrates. The High Court is allowed to admit such persons as conveyancers.

(*p*) See *supra*, p. 395.

(*q*) See *infra*, pp. 453, 454.

(*r*) Contributed W. R. Bisschop, LL.D.



**Administration of Justice.**—No. 3 provides for a further extension of the jurisdiction of special justices of the peace and an increase in their powers of punishment.

No. 6 (s) amends the law with reference to Criminal Procedure. The justices of the peace receive the right to hold a preparatory examination on receiving information of any crime or offence within the area of their jurisdiction, and to these examinations the provisions of section 79 of the Magistrates' Courts Ordinance No. 7 of 1902, (t) shall apply.

The magistrates shall have power to admit a person to bail who has been sentenced to imprisonment, but who has appealed to the High Court, or whose sentence is under review. If bail be refused appeal may be made to the High Court against such refusal.

The magistrates or special justice of the peace shall at any preparatory examination have the power to commit the accused person for sentence on that person's admission of guilt.

The words of the bail bond are amended, while provisions are made for the ordering of further sureties to be found, for the discharge of such sureties, and for their rendering the accused into Court. Further rules are inserted as to the arrest of persons on bail about to abscond, recognisances and deposits instead of recognisances, death of sureties, and the postponement and adjournment of trials.

No. 15 provides for the examination by interrogatories of persons resident in the Orange River Colony whose evidence shall be required in civil cases pending in any magistrate's Court in any neighbouring Colony or British Possession. Such examination shall be conducted in the same manner as of a witness in a case pending in a magistrate's Court in the Orange River Colony, and the witness shall be equally summoned and compelled to appear as if summoned to give evidence in the Court of such magistrate. The operation of this Ordinance depends upon reciprocal provisions being made by such other Colonies to which this Ordinance shall apply.

No. 31 authorises the Lieutenant-Governor from time to time to make, amend and appeal regulations for the better identification of criminals by means of a system for recording finger-prints or otherwise, and a refusal to submit to such methods of identification shall be punishable, the jurisdiction thereof being placed in the hands of the Resident Magistrates.

**Naturalisation.**—No. 7 amends the Naturalisation of Aliens Ordinance No. 1 of 1903, (u) and recognises certificates of naturalisation, or certificates of re-admission to British nationality, under the English Naturalisation Act, 1870. (x)

(s) See *infra*, p. 404.

(u) See *supra*, p. 385.

(t) See *supra*, p. 382.

(x) 33 & 34 Vict. c. 14.

**Railways.**—No. 8 authorises the Municipality of Ladybrand to have a railway constructed from Ladybrand to Modderpoort and to have a loan issued for that purpose on the conditions of an agreement between the High Commissioner and the Municipality of Ladybrand set out in Schedule A to this Ordinance, and a further agreement between that Municipality and the Central South African Railways Administration set out in Schedule B.

No. 28 authorises the construction of a railway between the towns of Bethlehem and Kroonstad and the working thereof and of a railway line between Van Reenen and Bethlehem by the Government of Natal. It contains in its Schedule the agreement for its construction and working.

**Game.**—No. 9 amends and consolidates the law with reference to the preservation of game, repealing the provisions of Law No. 17 of 1898, except Articles 2 to 9 thereof and Proclamation No. 6 of 1902. It fixes the time for the close season, allows landowners and *bonâ fide* lessees to kill game in close season under certain circumstances and requires game licences (for shooting and selling of game) for all persons except the above named. Shooting on Sundays is prohibited, while the protection of game may be extended by proclamation.

**Liquor Licences.**—No. 10 amends the Liquor Licensing Ordinance No. 8 of 1903, (y) and repeals the amending Ordinance No. 22 of 1903. (z)

**Land Expropriation.**—No. 11 (z<sup>1</sup>) repeals Law 1 of 1899 and Proclamation No. 8 of 1902 and consolidates and amends the law with reference to the expropriation of land for public purposes. Compensation shall be paid for land so expropriated, the amount to be settled by agreement or by arbitration. The procedure for such arbitration is set out in the Ordinance.

No. 32 provides for the method of expropriation of property acquired for railway purposes, and has to be read in conjunction with the Railway Expropriation of Land Ordinance No. 46 of 1903—s. 5 whereof is thereby repealed—and the above-mentioned Expropriation of Lands and Arbitration Clauses Ordinance No. 11 of 1905.

**Crown Lands.**—No. 14 authorises the Lieutenant-Governor to dispose of small portions of Crown land set out in the Ordinance and not otherwise alienable under the laws of the Colony.

**Stamp Duties.**—No. 13 amends the law relating to Stamp Duties and Licences, being Ordinance No. 10 of 1903. (a) The persons are named who shall be liable for having certain documents stamped. Certain offences are created in relation to dies and stamps. A number

(y) See *supra*, p. 386.

(z<sup>1</sup>) See *infra*, p. 406.

(z) See *supra*, p. 387.

(a) See *supra*, p. 387.

of changes are introduced in words and figures while the tariffs 4, 6, 7, and 9, and Schedule C undergo certain alterations. A new schedule is added regarding tariff-stamps on leases and agreements.

**Municipal Councils.**—No. 14 (*a*<sup>1</sup>) supplements and amends the provisions of law with reference to Municipal Councils and Village Management Boards, being contained in Ordinance (Orange River Colony) No. 12 of 1904, (*b*) specially as regards municipal elections; new councillors entering upon their duty; electoral procedure accounts of loans received from the Government; inclusion of lands acquired contiguous to boundaries in the municipal area; quit-rents; hospitals; extension of scope of municipal regulations; and others of minor importance.

**Prohibition of Import.**—No. 16 regulates the introduction into the Orange River Colony of articles or things which by reason of being affected or supposed to be affected with disease might be detrimental to the interests of the Colony.

The Lieutenant-Governor shall have the power by proclamation to make such regulations and to revoke or alter them. The prohibited articles or things may be inspected and seized.

**Roads.**—No. 17, amended by No. 33, consolidates (*c*) the laws relating to the construction and maintenance of certain roads within the Colony and defines the respective rights of landowners and travellers in connection therewith. Main roads shall be under control of a Director of Public Works assisted by a Chief Engineer and other road inspectors, while the Lieutenant-Governor shall be able to proclaim new main or district roads. The closing of main roads shall not be decided upon without a special commission being heard on its desirability. Rules are laid down for the entry upon land required for a road by the Chief Engineer, the width of public roads, the fencing across public roads. Several penalties are set out for obstructing public roads, the opening of gates, the malicious injury to roads or gates and the placing or leaving of rubbish on the roads.

Every farm shall be subject to a right of outspan, but the owner may beacon off an outspan over such an area as is set out in the Ordinance and subject to the inspection by the Chief Engineer, and to a number of rules set out in the Ordinance.

**Administration of Estates.**—No. 13 (*d*) regulates the administration of the estates of deceased persons, minors, and lunatics, and of derelict estates.

(*a*<sup>1</sup>) See *infra*, p. 412.

(*b*) See *supra*, p. 394.

(*c*) It Repeals Chapters LXXVI., LXXIX., LXXX., LXXXI., LXXXII., CXXIII., and CXXXVIII. of the Law Book, Laws No. 13 of 1892, 7 of 1893, 26 of 1894, 4, 5, and 25 of 1896, and 5 of 1898.

(*d*) It repeals Chapters LIV. and LV. of the Law Book and Law No. 17 of 1896.



Notice of death to be given to the magistrate of the district or to the Master of the High Court of Bloemfontein. All wills to be registered in a central register, kept by the said Master, whether originally deposited with the Master, or kept privately, or passed before a notary public; copies to be kept by the local magistrates.

On the death of any person an inventory shall be made of all goods and effects belonging to the deceased at the time of his death, and all originals of such inventories shall be transmitted to the Master, while a copy shall be kept by the magistrates of the district where the inventory was made.

Regulations are made for the custody of the estate pending the issue of letters of administration, either to the executor named in the will or to the executor dative appointed by the Master. Rules are set out as to the removal of executors, revocations of letters of administration and security for due administration.

The duties of executors are set out in full.

Special provisions are made of a summary appointment of administrators for estates less than £100, while for estates of less value than £50 the Master may dispense with the appointment of an administrator, and may direct the manner in which such estates shall be administered.

Special provisions are also made for the recognition and validation of letters of administration lawfully granted in the United Kingdom and every British Colony and British Possession or Protectorate, or by British Consular Courts.

Part III. of the Ordinance is entirely taken up by the provisions regarding the appointment of tutors over minors and their duties, and the Guardian's Fund which is administered by the Master and takes the place of the former Orphan Chamber's Fund.

Part IV. contains rules regarding the Master and his duties, and other general rules.

**Rabbits.**—No. 20 prohibits the introduction into, and controls the keeping of live rabbits in the Orange River Colony.

**Audit.**—No. 21 repeals Chapter LXXII. of the Law Book, and institutes the office of Auditor-General. It sets out the duties and powers of this public servant, and regulates the taking of audits of the Public Accounts of the Colony.

**Accounts.**—No. 22 creates the offence of falsification of accounts and renders it punishable with imprisonment, with or without hard labour, for a period not exceeding seven years.

**Graves Fund.**—No. 24 provides for the establishment of a fund in the hands of trustees for the maintenance and repair of the burial grounds and graves of persons who died during the period covered

by the operations of the late war within the Colony, or in any Concentration Camp established in Cape Colony for the reception of inhabitants of the late Orange Free State.

**Breeding Stock and Dams.**—No. 25 provides for the granting of loans to Farmers' Associations and to farmers for the purchase of breeding stock and the construction of dams.

**Surveys.**—No. 26 provides for the adjustment of township surveys, in order to make the occupied "erven" in certain towns and villages in the Colony correspond with the general plans of such towns or villages. Such amended survey must be authorised by the Lieutenant-Governor.

**Electric Lighting.**—No. 27 authorises the Lieutenant-Governor to from time to time make, amend, and repeal regulations in accordance with the regulations of the Board of Trade of the United Kingdom for the proper and safe employment of electricity for the purpose of electric lighting and power generally.

**Public Education.**—No. 29 (*e*) amends the Public Education Ordinance No. 27 of 1903. (*f*)

The Colony shall be divided into school districts, and every district shall have a school committee, the bare majority of its members to be elected by the white inhabitants of the district and the rest to be nominated by the Government. Electors shall be all who are on the voters' rolls in municipalities, owners and occupiers of farms, lessees of Crown lands, and those villagers who would be on the voters' roll if the village were a municipality.

Rules are set out for the election of committee members, also for the conduct of business by the committees and their proceedings, the powers of the chairman of committee, and the election of officers of committee.

Education at all Government schools, except high schools, shall be free. The cost of maintaining the schools shall be found by local contribution which shall be fixed for every year by the Director of Education in consultation with the Colonial Treasurer and levied by each committee from its own district in any manner which the committee may consider wisest. At the proposal of the school committees the Government may increase local contributions. The committee shall have free control of such funds as shall be placed at its disposal upon requisition rendered monthly to the Education Department, but expenditure shall be regulated by conditions laid down by that department and be subject to audit of accounts.

The general powers and duties of committees are set out, as well as the rules for the appointment, suspension, and dismissal of teachers.

(*e*) See *infra*, p. 410.

(*f*) See *supra*, p. 339.

Every teacher must hold a certificate of competency and shall be appointed by the Lieutenant-Governor after he shall be selected and nominated by the district committee, and his nomination shall have been approved of by the Director of Education. The district committee shall only be able to nominate a teacher from the registers of qualified teachers kept by the Education Department, or—in case the committee wants to advertise for applicants—from among such applicants as shall have sent in their application through the department and be considered fit by that department to be placed on the said lists. The dismissal of teachers shall be made by the Director and must be confirmed by the Lieutenant-Governor.

The attendance at school shall be compulsory for all children between ten and sixteen years of age, except for reasons set out in the Ordinance. The district committee has to summon parents of children who do not so attend the school, and may prosecute such parents who, if convicted, will be liable to pay fines.

The district committee may appoint sub-committees.

Private schools shall be under the supervision of the district school committees, and these committees may report to the Government regarding the advisability of closing any of these schools. The Government may on investigation of such complaints order the closing of the school.

The Lieutenant-Governor shall make regulations for the Normal School at Bloemfontein and the Government high schools, while special regulations are set out for the education at Grey College and the High School for girls at Bloemfontein.

English shall be the medium of instruction, but any scholar shall at the request of his parent or guardian receive instruction in the Dutch language, and the time devoted to the teaching of English and Dutch, as languages, shall be the same.

Religious instruction shall be given in all Government schools for periods not exceeding in all two hours a week according to a purely historical handbook to be approved of by the Education Department, but no child need attend school during the time devoted to Bible history. Teachers who declare not to be able conscientiously to undertake the teaching of Bible history shall be exempted therefrom. Dogmatic instruction may be given at the wish of the parents by any minister of religion who has been recognised by the Government, but only in separate parts of the school buildings and after school hours.

**Volunteer Corps.**—No. 35 contains provisions for the formation and regulation of Volunteer corps.



1906 (*g*)

Ordinances passed—32 ; Private, 1.

**Administration of Justice.**—No. 1 makes further provisions for the administration of justice by giving resident magistrates the power to grant interdicts for arrests against persons and things, and for the attachment of money of a judgment debtor which is in the hands of third parties. It extends the jurisdiction of the resident magistrate under the Magistrates' Courts Ordinance, 1902, (*h*) and under the Criminal Procedure Amendments Ordinance, No. 6 of 1905, (*i*) applies certain provisions of the Law of Evidence Ordinance, 1902, (*k*) regarding the preliminary examination of witnesses and the admissibility of finger-prints and other records to prove previous conviction.

It fixes the procedure on the trial of a person who is committed by a magistrate for sentence under the terms of s. 4 of the Criminal Procedure Amendment Ordinance, 1905 ; gives the Courts discretion to discharge accused persons on recognisances and regulates the recognisances to keep the peace and be of good behaviour, as well as the process for levying the amount of a fine and the suspension of execution of imprisonment in default of payment of the fine and the payment of fines by instalment.

Every male inhabitant shall be required to assist in the arrest of a person if required to do so by an officer of the law.

Special power is given to the Lieutenant-Governor, after having declared by proclamation under the Prisoners' Detention Ordinance, No. 17 of 1904, (*l*) that a Colony or territory in South Africa provides for the detention of offenders sentenced by a competent Court of the Orange River Colony, to remove any person who is undergoing sentence of imprisonment in the Orange River Colony to any such Colony or territory mentioned in the said proclamation, and any such person shall be deemed to be under lawful custody during the course of such removal.

No. 2 makes provisions to facilitate the recovery of certain petty debts, and repeals in that respect so much of the Magistrates' Courts Ordinance, 1902, as will be inconsistent with the provisions of this Ordinance. The procedure is set out which has to be followed concerning summonses for amounts under £10, and it is provided that the judge of the High Court may make general rules prescribing forms of summonses and other rules to be used in procedure under this Ordinance in any Court of resident magistrates.

**Insolvency.**—No. 3 sets out the conditions under which a deed or

(*g*) Contributed by W. R. Bisschop, Esq., LL.D.

(*h*) See *supra*, p. 382.

(*k*) See *supra*, p. 382.

(*i*) See *supra*, p. 398.

(*l*) See *supra*, p. 392.

instrument made or entered into between the debtor and his creditors relating to his release of debts and liabilities, or the distribution, inspection, management, winding up of his estate, shall be as valid and binding on all the creditors of the debtor as if they were parties to and had duly executed the same.

Certain particulars of such deeds shall be registered by the Master of the Court and advertised in the *Official Gazette*, and these items shall be open for inspection of all creditors.

The assignment of composition deeds between the debtor and his creditors shall be registered, and the Master shall call a meeting of creditors for the proof of their debts. These proofs may be given by affidavits; declarations are to be filed with the Master and may be inspected and copied by the other creditors, while any creditor whose debt exceeds £25 shall be entitled to summon the debtor in order that he may be examined. Provisions of the insolvency laws shall be extended to the parties to such deeds, and execution against debtors shall be stayed by the filing and registration of such deeds, while the petition of sequestration after the execution of such deed or instrument may be dismissed.

Special provisions are made regarding unknown creditors.

**Authentication of Documents.**—No. 4 provides that the judges of the High Court shall have power to make rules from time to time respecting the necessary requirements for the authentication of documents signed and executed outside the Orange River Colony, which may be produced and used in any Court of Justice or in any public office in the Orange River Colony.

**Half-Holidays.**—No. 5 makes provision to secure one half-holiday per week for shop assistants, the closing day to be selected by the shopkeeper, but with the approval of the Lieutenant-Governor.

**Asiatics.**—No. 6 makes provisions to regulate and control the employment of coloured people to work within or beyond the borders of the Orange River Colony.

**Telegraph and Telephone.**—No. 7 abolishes Chapter LX. of the Law Book and Law No. 4 of 1899 and makes provisions for the consolidation and amending of the law relating to telegraphs and telephones. It provides that the construction, maintenance, and control of all telegraph wires shall be vested in the Government, but that the regulations for the establishment and management of telegraph offices and their work shall be made by the Lieutenant-Governor. It further contains provisions necessary for the management of the telegraph department and the duties of the Postmaster-General and his subordinates and penalties against interferences with the proper exercise of these duties on the part of the public or the civil servants.

Provisions are made for the erection of telegraph poles and telegraph wires and the compensation of possible damage caused thereby.

The prosecution of any offence shall lie with the Postmaster-General and the jurisdiction with the Courts of the resident magistrates.

**Irrigation.**—No. 10 makes provisions for the carrying out of irrigation schemes and affords greater facilities to persons having a right to water to convey the same across the lands of other persons.

Any person having a legal right to any water in any stream or river or derived from any spring, dam, or reservoir shall be entitled in every case in which such right is necessary to enable him to use the water for irrigation purposes or hydraulic works or for useful works to claim the right temporarily or in perpetuity to convey water from or over land belonging to or in the occupation of any other person upon payment of compensation.

Notice to acquire such rights must be given to the owner of the property over which the water will have to be conveyed, and in case these two persons cannot agree as to the details of such conveyance or the sum to be paid for compensation, these matters shall be settled by arbitration in the manner provided by the Expropriation of Lands and Arbitration Clauses Ordinance, No. 11 of 1905. (m) The duties of such arbitrators are set out.

Special provisions are made for making mortgagees parties to the arbitration; for the costs of the works to be constructed and the mode and the person by whom they shall be constructed; for the manner in which the channel shall be kept clean and in repair; and the measures to be taken to secure free passage over the property.

All servitudes created shall be registered on the title-deeds and shall involve the right of everything necessary to their use, including the right to clean and repair.

**National Hospital.**—No. 11 repeals Law No. 2 of 1899 and provides rules for the management and control of the National Hospital.

**Transfer Duties.**—No. 12 repeals Chapter LXVII. of the Law Book, the Transfer Amendment Duties Ordinance of 1903, and amends and consolidates the laws relating to transfer duties.

**Lunacy.**—No. 13 repeals Law No. 4 of 1893 and makes provisions regulating and adding to the law relating to lunatics.

Part I. makes provisions relating to lunatics who are neither kept at the Lieutenant-Governor's pleasure nor are criminal lunatics. These provisions relate to: (1) lunatics who are apprehended by the magistrate after having been found wandering at large and deemed to be lunatics—of these the Attorney-General shall be *ex officio curator ad litem*; (2) the power of husbands, wives, friends, or relatives of persons deemed

(m) See *supra*, p. 399.



to be lunatics to apply direct to the Court or a judge for an inquiry as to the mental condition of such person; (3) the right of any person detained to apply under a Summary Jurisdiction Order to the Court for inquiry.

Part II. contains provisions relating to lunatics who are detained at the Lieutenant-Governor's pleasure and criminal lunatics, their custody, their examination, and their ceasing to be criminal lunatics.

Part III. contains provisions for the account and administration of lunatics' property during their detention and after their death.

Part IV. provides for penalties against certain offences in connection with the provisions of the Ordinance.

Part V. contains general provisions regarding lunatics from neighbouring Colonies, the detention of persons in asylums or in private houses, the necessity of their being visited by an independent medical practitioner, the maintenance of insane persons residing or being taken charge of in private dwelling-houses and the care to be bestowed upon such lunatics. Further provisions regard the re-capture of escaped lunatics, the cost of their maintenance in asylums or elsewhere, actions brought by lunatics, the appointment of visitors, and the powers of the Asylums Board.

**Customs.**—No. 14 ratifies the Customs Union Convention, which is set out in full as an appendix to the Ordinance, and amends the provisions of the Customs Consolidation Ordinance No. 34 of 1903. (*n*)

**Excise and Import Duties.**—No. 29 consolidates (*o*) the law relating to import duty on intoxicating liquors.

**Licences.**—No. 28 provides for the sale of beer by brewers in retail quantities by bottle.

**Loans.**—No. 17 declares the terms and conditions applicable to loans authorised to be raised by the Government of the Orange River Colony, and provides for the creation of the Orange River Colony Inscribed Stock.

**Trust Securities.**—No. 20 makes provisions to facilitate the investment of trust and other funds in the United Kingdom in Orange River Colony Government Securities, in connection with the Imperial Colonial Stock Act, 1900, (*p*) which provides that the securities in which a trustee may invest under the powers of the Imperial Trustee Act, 1893, (*q*) should include any Colonial stock which was registered in the United Kingdom in accordance with the provisions of the Colonial Stock Acts.

(*n*) See *supra*, p. 390.

(*o*) It repeals Laws No. 18 of 1897, No. 19 of 1898, No. 13 of 1899, Ordinance No. 14 of 1902, and Ordinance No. 23 of 1903, and amends in certain respects the Liquor Licensing Ordinance No. 8 of 1903. See *supra*, p. 386.

(*p*) 63 & 64 Vict. c. 62, *supra*, vol. i. p. 56.

(*q*) 56 & 57 Vict. c. 53.

**Foreign Enlistment Act.**—No. 19 applies the provisions of the Imperial Foreign Enlistment Act, 1870, (*r*) to the Orange River Colony.

**Cattle Diseases.**—No. 22 amends the Ordinance No. 13 of 1903, (*s*) for the purpose of preventing more effectually the spread of infectious and contagious diseases amongst cattle and other animals.

To the list contained in Ordinance No. 13 of 1903 eight more diseases of animals are added to be provided for. Further amendments regard the procedure in case of infectious animals and the action by the resident magistrate in case of infection.

**Sale of Food and Drugs.**—No. 32 regulates the sale of food and drugs.

**1907** (*t*) Ordinances (Lieutenant-Governor in Council)—31 ;  
Private Ordinances—5.

**Fencing.**—No. 1 provides for the control and maintenance of fences on the boundaries of the Colony. The control of the boundary fencing rests with the Director of Public Works, who, for the purpose of exercising his duty, is allowed to enter upon any land situated on or adjoining the boundary. Regulations for the control and maintenance of the fencing shall be made by the Lieutenant-Governor.

**Solemn Declarations.**—No. 2 amends the law relating to solemn declarations, and sets out the form in which such declarations shall be henceforth made and subscribed.

**Survey.**—No. 3 provides for the taxation of surveyors' bills of costs.

**Administration of Justice : Jury.**—No. 4 amends the Jury Ordinance, No. 17 of 1902, (*u*) by setting out the new radius within which the jurymen shall be elected, and by ordering new jury lists to be framed after the first circuit of 1907.

**Resident Magistrates.**—No. 7 amends certain provisions of the law relating to resident magistrates, authorising them to hold Court at any appointed place in their district, and to appoint detached assistant resident magistrates to act and hold Court at more than one place within the local limits assigned to them. Civil actions to be heard in Court before such detached assistant resident magistrates, if the defendant lives within such local limits, unless the defendant elects to be summoned before the resident magistrate himself.

No more agents to be admitted as agents of the Court of the resident magistrate unless qualified before October, 1899, and article clerks to appear in Court under certain conditions.

No. 11 amends and extends the authority of special justices of the peace.

(*r*) 33 & 34 Vict. c. 90.

(*t*) Contributed by W. R. Bisschop, Esq.

(*s*) See *supra*, p. 389.

(*u*) See *supra*, p. 383.

**Interpretation and Revision of Laws.**—No. 13 further corrects certain verbal errors in the existing statutory laws in addition to those mentioned in the Schedule to the Correction of Verbal Errors in Laws Ordinance, No. 1 of 1905, and in Schedule B of the Interpretation and Revision of Laws Ordinance, No. 27 of 1906.

**Natives.**—No. 6 provides for the management of native reserves. Native reserves shall be created and limits determined by the Lieutenant-Governor by proclamation. For every such reserve the Lieutenant-Governor shall nominate a Board of Management to consist of nine persons, all of whom—with the exception of the chairman and vice-chairman—shall be coloured persons, the membership to be for a term of three years. The chairman and vice-chairman shall be white persons. No meeting of the board shall be held unless either the chairman or vice-chairman be present, and the chairman or vice-chairman shall preside at the meeting of the board, of which four members shall form a quorum.

The duties of these boards shall be as follows, viz. to keep the main roads in the native reserves in sufficient order and repair, to erect fencing on the boundary of the reserve, and to have and exercise for that purpose the status of landlords under the fencing laws of the Colony, to make all necessary flues, watercourses, drains, sewers, and bridges, to construct all works which may be deemed necessary for the proper supply of water for the inhabitants of the reserve, to provide a proper sanitary service for the community, in consultation with the Director of Education to establish or supervise any school for the industrial or technical education of coloured persons, and for the purpose of providing the means for carrying into effect the provisions of this Ordinance to levy an annual tax not exceeding £1 in any year on each coloured male person resident within the reserve between the ages of sixteen to sixty.

Every board shall have the power to make regulations and amend them and to see to their being duly observed, and to punish any contravention with a fine not exceeding £2, or in default of payment imprisonment with or without hard labour for a period not exceeding two months. These regulations may be for the sanitation of the community, the grazing and watering of cattle on common land, the supply of water, the repair and maintenance of roads, the erection of dipping tanks, the establishment of burial places, the prohibition of moving dangerous animals, the abatement of nuisances, the prevention and extinction of fires, in short, to the general good order and government of the community and protection of the rights of its inhabitants.

Such regulations shall be forwarded to the Colonial Secretary, and submitted to the Lieutenant-Governor for his sanction, amendment, or



rejection. After their sanction they shall be published in the *Gazette* and have force of law from the date of such publication until they are altered, amended, or repealed.

Fines under the regulations shall be prosecuted in the Courts of the resident magistrates or special justices of the peace. But all fines paid on account of such prosecution shall be paid to the board.

No. 12 exempts certain distinguished coloured persons from certain disabilities while visiting the Colony. Such exemptions are to be granted by the Lieutenant-Governor at his discretion by the issue of a certificate. Such certificates are to be applied for by the coloured persons to the Colonial Secretary.

No. 28 repeals Chapter LXX. of the Law Book and consolidates and defines the law regarding registration of, and control over, coloured persons on mines and diggings.

**Customs.**—No. 8 imposes duties on the export of Angora rams and ewes unless such exportation takes place to another colony or territory in South Africa which has by Statute similarly provided for the imposition of a duty on the export of Angora rams and ewes.

**Licences.**—No. 10 amends the Liquor Ordinance, No. 8 of 1903, (x) relating to liquor licences on railway stations and in theatres, sets out the conditions under which lessees or keepers of refreshment rooms on railway stations and in theatres can apply and obtain licences for the sale of intoxicating liquors. The provisions are set out in which such licences can be granted, and authority is given to extend the time for the sale of liquor licences in certain instances.

**Medicine, Dentistry, and Pharmacy.**—No. 14 amends the Medical and Pharmacy Ordinance, No. 1 of 1904, (y) and makes new provisions for the meetings of the council and for the practising of a *locum tenens* under the registration licence of a registered medical practitioner. It also amends the provisions of the principal Ordinance in respect of poisons.

**Coal Tax.**—No. 15 amends the Coal Tax Ordinance, No. 25 of 1903, (z) enacting that the Lieutenant-Governor may determine the amount of the coal tax.

**Education.**—No. 18 amends the Public Education Ordinance, No. 29 of 1905. (a) The amendments regard particularly the levying of an educational tax of 10s. on every male person of and above twenty-one years of age resident in the district and who is not a coloured person.

**Explosives.**—No. 19 repeals Chapter XLVI. of the Law Book and regulates the law relating to explosives by defining the term "explosive" and submitting the export or import thereof into or out of the Colony

(x) See *supra*, p. 386.

(z) See *supra*, p. 399.

(y) See *supra*, p. 390.

(a) See *supra*, p. 402.

or purchase within the Colony to the possession of a permit, to be obtained for such purpose from a resident magistrate. Permits to coloured persons can only be issued with the special authority of the Lieutenant-Governor. In case of storage of quantities over 100 lbs. a proper magazine must be available.

Dealings with explosives are subject to a licence which has to be taken out under the Stamps and Licence Ordinance, No. 10 of 1903, (b) or the Arms and Ammunition Ordinance, No. 15 of 1902. (c)

The establishment of magazines for the storage of explosives is specially regulated, and the licences to be obtained for the keeping of such magazines, which require a special permission from the Colonial Secretary, for which application has to be made.

Further provisions are made for preventing and punishing breaches of these regulations and the searching for explosives illegally kept.

**Diamond Tax.**—No. 24 imposes a tax of 7 per cent. on the product of certain diamond mines as defined in Part VIII. of Ordinance No. 4 of 1904. (d)

**Insect Pest and Disease of Plants.**—No. 25 provides for the prevention of the spread of insect pests and disease of plants by empowering the Governor to make regulations for the carrying out of these provisions.

**Locusts.**—No. 27 provides for the destruction of locusts. After giving the interpretation of terms, it defines the terms “owners,” “occupiers,” and “owners and occupiers of mining property.” The Ordinance provides that every occupier of a farm upon which locusts deposit their eggs shall, as soon as possible, under the penalty of a fine, give notice in writing to the police in his locality.

Similar notice shall be given to the same official as soon as any *voetgangers* shall appear on any farm, whether hatched out thereon or otherwise, under a penalty of a fine for driving, or attempting to drive, or permitting *voetgangers* to be driven from his farm.

As soon as the police have received any information of this kind they shall immediately transmit the information to the Director of Agriculture.

Officers shall be appointed under the provisions of this Ordinance to carry out the provisions thereof and to be called Locusts Officers. These officers shall, at the orders of the Director of Agriculture, be empowered to take such steps as the Director shall think necessary for the destruction of the eggs or for destroying *voetgangers*. The costs of destruction shall be borne by the Government unless the occupier of

(b) See *supra*, p. 387.

(c) See *supra*, p. 383.

(d) See *supra*, p. 397.

the farm (or in case there is no occupier, then the owner) shall have failed to give information of the appearance of any *voetgangers* on his farm.

The Government shall not be liable for damage for carrying out the provisions of this Ordinance. Penalties are provided for the destruction and the improper use of material, and all contraventions of the provisions of the Ordinance shall come before a resident magistrate.

**Mining.**—No. 30 amends the Mining and Precious Stones Ordinance No. 3 of 1904, (e) by defining more particularly the manner in which the share of the Crown in any mine falling under the provisions of Part VI. of the 1904 Ordinance shall be ascertained and paid to the Government of the Colony.

**Public Health.**—No. 31 (f) codifies, consolidates, and amends the law relating to Public Health. Part I. contains general provisions regarding the carrying out of the provisions of this Act. Part II. provides against general nuisances with regard to sanitary regulations and the prohibition thereof. Part III. deals with infectious diseases and the notification thereof to the local authorities of urban districts or to the resident magistrates. Part IV. makes provisions for the prevention of contagious diseases by the removing of infectious persons, the removal of infectious clothes, disinfection of houses, closing of schools; by the prohibition of exposure of infected persons and things, of sending an infected child to school, of conveying infected persons in public conveyances; by the inspection of dairies and the prohibition of milk supply; by compelling dairymen to supply information and to produce lists of customers and invoices; by the disinfection of public conveyances; by granting power to local authorities to provide hospitals, mortuaries, and places for post-mortem examinations; and by the prohibition of retention of dead bodies, the removal of such bodies and their burial.

This chapter further sets out regulations regarding houses let in lodgings, and the compulsory vaccination by local authorities of persons infected with small-pox. It gives general power to the sanitary authorities to make regulations for the prevention of epidemic diseases. Part V. sets out dairy and cow-shed provisions. Part VI.

(e) See *supra*, p. 395.

(f) It repeals Law No. 7 of 1899 (Asiatic Pest or Bubonic Plague), Part I. of the Contagious Diseases (Small Pox) Law, No. 31 of 1899; the Board of Health Proclamation No. 2 of 1901; s. 126 of the Bloemfontein Municipal Ordinance, No. 25 of 1903 (*supra*, p. 390); s. 7 of the Municipal Corporations (Supplementary) Ordinance, No. 14 of 1905 (*supra*, p. 400); s. 9 of the Bloemfontein Municipality (Supplementary) Ordinance, No. 19 of 1905; s. 6 of the Bloemfontein Municipality Ordinance, No. 36 of 1905.



provides against unsound food. Part VII. deals with ice-cream and aërated waters; Part VIII. with offensive trades; Part IX. with the cleansing and removal of refuse. Part X. provides for a proper water supply, and Part XI. contains miscellaneous regulations and sets out the punishments on contraventions of the provisions of the Act, wherein scheduled regulations are set out for the keeping of a dairy.

## 4. SOUTHERN RHODESIA.

1898 (*a*)

Ordinances passed—2.

A volume was published containing the “entire Statute Law of Rhodesia with the exception of the Ordinance Regulations and Notices relating to mining” down to December 31, 1898. In it there is only one Ordinance (No. 2) of that year which enacts that the law of Cape Colony relating to licences, fees, and of office and other duties is deemed to have been in force in Rhodesia since June 10, 1891.

1899 (*b*)

Ordinances passed—21.

**Apprenticeship.**—With a view to the establishment of technical schools, agricultural colleges, and industrial homes for native children, No. 1 provides for the apprenticeship of native children to the superintendents or masters of such institutions.

**Legislative Council.**—The procedure in the Council is regulated by No. 2, and modelled upon the laws directing the conduct of the Cape Parliament. The Administrator presides at all meetings. Among the rules may be noted:—

24. Every member present is required to give his vote on every division.

34. All imputations of improper motives shall be considered as being highly disorderly.

48. Ordinances interfering with the lands and other rights of the British South Africa Company cannot be proceeded with except with the consent of the Administrator.

58. The principle of an Ordinance shall not be discussed in committee.

80. Any person who shall cause any interruption, or make any disturbance, or unseemly noise, or gestures, in the council-room, or at any door or window thereof, may be removed by order of the President, and if violent and disorderly, may be given in charge of a policeman, and be by him detained or placed in confinement until the rising of the Council, or if he be guilty of any breach of law, until he be brought before a magistrate for a trial of his offence.

[The last is] No. 81. In all cases not herein provided for, resort shall be

(*a*) Contributed by C. E. A. Bedwell, Esq.

(*b*) Contributed by C. E. A. Bedwell, Esq.

had to the rules, forms, usages, and practices of the House of Assembly of the Cape of Good Hope, which shall be followed so far as the same may be applicable to this Council and not inconsistent with the foregoing rules and orders.

**Mines.**—No. 3 amends the law of 1895 dealing with the whole subject in the direction of securing the rights of holders of registered mining locations.

**Juries.**—Trial by jury, consisting of nine men, in criminal cases is provided for by No. 4. If the full number are not in attendance the trial may take place with not less than five. Failing that number the judge is to hear the case but he may call to his assistance four assessors. The exemptions from serving include :—

All ministers of the Gospel or persons who shall preach or teach any religious congregation and who shall not follow any secular occupation.

All school masters and school inspectors.

All persons continuously employed in the working of any railway or tramway.

All persons actually engaged as editors of, or reporters for, newspapers.

**Witnesses.**—Provision is made by No. 5 for the examination by interrogatories of persons in Southern Rhodesia whose evidence is required in civil cases in neighbouring states.

**Game.**—The game laws are consolidated in No. 6, (c) which has a wide application, and may be extended further by the Administrator to any bird or animal. A big game licence, costing £25, may be granted :—

Provided that it shall not be lawful for the Administrator to grant permission to hunt, pursue, capture, or kill any elephant, giraffe, hippopotamus, white rhinoceros, eland, zebra, Burchell zebra or quagga, koodoo, or ostrich, which species shall be Royal game, unless such animals are required *bonâ fide* for scientific or farming purposes.

**Native Labour.**—The employment of natives within the Colony is regulated by No. 9, and also their removal beyond its borders. Any contract for the latter purpose must be registered with the Native Commissioner, who thus has an opportunity to examine its provisions and vary any particular. Penalties are imposed upon any one who induces a native to leave without a contract of service.

**Witchcraft.**—Ordinance No. 14 is enacted in place of the Regulation of 1895 for the suppression of witchcraft.

The term witchcraft shall include the “throwing of bones,” the use of charms and any other means or devices adopted in the practice of sorcery.

(c) See *infra*, p. 421, and repealing Ordinance No. 13 of 1906, *infra*, pp. 424-425.



Severe penalties are imposed with the object of exterminating the practice, and any one taking money for it is punishable for having received it by fraud.

**Education.**—Provision is made by No. 18 (*d*) for the appointment of an Inspector of Education and the regulation of public grants. A schedule containing the school regulations shows that the dual system, comprising “voluntary public schools” managed by a recognised religious body and “public undenominational schools,” prevails in the Colony.

**Licence.**—An amendment (No. 20) to the licence and stamp laws deals particularly with licences to joint-stock companies and licences for beer halls.

**Customs.**—No. 21 (*e*) sets up the machinery for the collection and administration of customs.

## 1900 (*f*)

### Ordinances—14.

**Registration of Contracts.**—No. 1 amends the law of registration of mortgages and ante-nuptial contracts by giving twenty-eight days for registration and repealing so much of the Cape Acts applicable as are repugnant to the present Ordinance.

**Local Government.**—No. 2 amends the Towns Management Ordinance, 1894, and empowers sanitary boards to frame regulations for imposing a tax on the keeping of dogs, for regulating structures, for covering wells, and sanitary purposes.

By No. 9 the Municipal Law of 1897 is amended, and it is provided that owners and occupiers may be charged £10 for each attendance of the fire engines and appliances and £5 per hour during the time that water shall be playing upon their buildings.

**Census.**—No. 3 provides for a census in 1901.

**Cattle.**—No. 4 amends the law with reference to the branding of stock. The definition of “brand” is the impression of any letter, sign, or character branded upon any horse, cattle, or ostrich, and the impression of any letter, sign, or mark branded or tattooed on the body of any sheep, goat, or ostrich, or made upon the wool of any sheep or goat by pitch, paint, tar, or other substance. A Brand Directory is to be published by authority. Entries in the register of brands are to be settled by agreement between conflicting claimants or by the Registrar. Brands may be assigned, but transfers are only to have validity when registered.

(*d*) Repealed by No. 1 of 1903, *infra*, p. 421.

(*e*) Repealed by No. 6 of 1903, *infra*, p. 421.

(*f*) Contributed by Israel Davis, Esq.

No. 5 (*g*) is a code in thirty-four sections for suppressing lung-sickness in cattle. It contains provisions for inspection, quarantine, slaughtering, and compensation. Inoculated cattle may not be sold in public within less than thirty days after inoculation.

**Licensing Dentists.**—By No. 8 no person who has not been duly licensed to practise dentistry shall be entitled to recover any fee for dental service. Persons entitled to practise as dentists in Cape Colony or licentiates in dental surgery or dentistry in the United Kingdom or in any British Colony or possession, or holding certificates, diplomas, etc., entitling them to practice dentistry in any foreign country and furnishing sufficient evidence of knowledge and skill, or persons who before the Ordinance obtained permission or authority to practise as dentists in Southern Rhodesia, are admissible to practise as dentists and to obtain the licences. If any person licensed or authorised to practise shall after due inquiry, at which he shall have an opportunity of being heard, be found or reported to have been guilty of infamous or disgraceful conduct in any professional or other respects, the Administrator may direct that his licence be cancelled. Any person who shall wilfully pretend to be or shall take or use the title of dentist, or shall practise as a dentist without the requisite licence, shall be liable to a penalty of £100 for each offence, with six months' imprisonment in default.

**Criminal Law Amendment.**—No. 13 is directed to the protection of women and girls and the suppression of brothels. Its fourteen sections differ greatly from the provisions of the Imperial Act of 1885, (*h*) but it refers to an earlier law of 1897. The age at which consent may be given is fourteen years, and it is a defence to the person charged under the unlawful knowledge section that he was under fifteen years. In a prosecution for living on the earnings of prostitution—the penalty for which is a fine of £100, or imprisonment for six months, increasing on subsequent convictions to £500, twelve months, twenty-five lashes, or any two or more of such punishments—it is sufficient to prove that the male person consorted or lived with, or was habitually in the company of, the prostitute, unless he can satisfy the Court that he was not knowingly living on the earnings of prostitution.

**Land Grants.**—No. 14 declares the meaning of the term "occupation" with reference to grants of land as follows:—The erection of permanent substantial buildings worth £250 upon fifteen hundred morgen or the maintenance thereon for three years of (1) twenty head of horned cattle, horses, mules, or asses, or one hundred and fifty sheep, goats, or pigs; or (2) enclosure and cultivation for three years of ten acres of land out of the fifteen hundred morgen; or (3) enclosure, planting, and maintaining

(*g*) Repealed by No. 9 of 1904, *infra*, p. 423.

(*h*) 48 & 49 Vict. c. 69.

of five hundred fruit or one thousand timber trees, or the performance to the satisfaction of the Administrator of a proportionate part of the requirements of (1), (2), and (3). The form of grant scheduled to the Ordinance certifies that the British South Africa Company has granted the land described in the diagram, subject to quit rent and the reservation to the company of gold, silver, aluminium, copper and their ores, coal, precious stones, mineral oils, and minerals containing mineral oils. With regard to any other minerals, the company may peg off the same by its assigns under the mining law, but the grantee shall be entitled to half of any profit which may accrue to the company. Power to make roads, telegraphs, railways, etc., without compensation is reserved to the company. The company may resume the land for public purposes, which include the establishment of a township, on paying compensation under the Cape Lands Clauses Act, 1882. Persons travelling by vehicle, riding, or travelling with stock or traction engines or otherwise, and persons having waggons for transport purposes along roads declared necessary for public requirements, may outspan, travel, off-saddle, or halt upon the land, except where under cultivation or within two hundred yards of a dwelling-house, and take water for such traction engines and depasture and water any animals used or driven by or accompanying them for not exceeding twenty-four hours, excepting in cases of detention for a longer period by accident, stress of weather, swollen rivers, or other unavoidable circumstances, but the grantee may delimit an area or areas not exceeding ten per cent. of the extent of the farm, with reasonable access to water, to be set aside as an outspan.

## 1901)

### Ordinances passed—22.

**Indemnity.**—The Administrator and officer commanding the forces is indemnified by No. 1 for all acts done during the existence of martial law.

**Native Marriages.**—Native marriages are regulated by No. 12 and arrangements made for the payment of “Lobolo” in accordance with native custom.

Lobolo means the delivery of stock or its equivalent in other property, or payment in cash, by on behalf of an intended husband to the parent or guardian of an intended wife.

**Peace Preservation.**—The Administrator is authorised by No. 4 to apprehend any person who is suspected of inducing the natives to rise and to imprison or otherwise take security to prevent him according to the evidence.



**Licences and Stamps.**—The law relating to licences and stamps is consolidated by No. 6. A scale of fees is fixed for the different occupations which form a comprehensive list. The Act also embodies the law for the stamping of legal documents.

**Animal Diseases.**—The law for preventing the spread of rinderpest, scab, and other diseases in cattle is consolidated in No. 7. (*k*)

**Gold Trade.**—Dealings in gold are regulated by No. 8, and unauthorised persons prohibited from having it in possession. Dealers in gold are required to have a licence. Suspected packages passing through the post may be examined by a magistrate, the police, or Mining Commissioner in the presence of the Post Office officials. The object of the Ordinance is the protection of the British South Africa Company. Any forfeited gold may be sold and the proceeds paid into this treasury.

**Hut Tax.**—Every male over the age of eighteen is required by No. 12 (*l*) to pay ten shillings in respect of the occupation of every hut used by him during any part of the year.

**Excise.**—A duty is imposed by No. 14 upon spirits distilled or manufactured within the Colony.

**Labour Importation.**—An Immigration Department is established by No. 18 (*m*) for the purpose of regulating the importation of labourers into Southern Rhodesia. Contractors bringing labour into the territory must hold a licence. The rates of pay, food, vaccination, accommodation, and general well being of the labourers are within the purview of the Department. Misconduct renders the labourer liable to a long list of fines and punishments according to the gravity of the offence.

**Registration of Natives.**—Regulations made in 1895 are repealed by No. 16, (*n*) and the conditions as to the employment of natives set forth anew. Contracts of service must be registered. Natives are required to provide themselves with passes.

## 1902 (*o*)

## Ordinances passed—14.

**Immigration.**—By an amendment to Ordinance 18 of 1901 (*p*) the Protector of Immigrants is to be appointed by a Secretary of State upon the nomination of the British South Africa Company, and is not removable without the same authority.

**Dairies.**—Provision is made by No. 5 for the regulation of dairies, cowsheds, and milk shops, and the sale of butter. It is an adoptive Ordinance.

(*k*) Repealed by No. 9 of 1904, *infra*, p. 422.

(*l*) Repealed by No. 21 of 1904, *infra*, p. 422.

(*m*) See *infra*, p. 419.

(*n*) Repealed by No. 10 of 1902, *infra*, p. 420.

(*o*) Contributed by C. E. A. Bedwell, Esq.

(*p*) See *supra*, p. 419.

**Queen Victoria Memorial.**—The building erected in Salisbury to the memory of Queen Victoria is vested by No. 7 in a body of trustees to be used exclusively as a Public Museum and Library, and for scientific and literary purposes.

**Registration of Births and Deaths.**—No. 8 is a comprehensive Ordinance dealing with the machinery for the registration of births and deaths, distinguishing natives from others, and making different arrangements in urban and non-urban areas.

**Ancient Monuments and Relics.**—The protection of ancient monuments and relics is entrusted by No. 9 to the Administrator. They are defined to include—

*Ancient Monument.*—All buildings of stone or brick, or ruins, or remaining portions of such buildings or ruins, stone circles, tumuli, tombs, tombstones, altars, pillars, statues, idols or anything of a similar kind erected or constructed by the early inhabitants of the country at a period estimated to have been prior to the year 1800, and shall include Bushmen's paintings or drawings.

*Ancient Relic.*—All phalli, small images, coins, carved, engraved or worked stone, metal or pottery, robes or garments embossed with gold or any metal wire, metal chains, or emblems of office, rings, anklets, or bracelets, found in Southern Rhodesia, constructed or made by the early inhabitants of a period estimated to be prior to the year 1800.

The Administrator may make arrangements for the excavation of any ancient monuments, and for the public to view them.

**Registration of Natives.**—No. 10 is a consolidating enactment (*q*) regulating the granting of passes, registration, and employment of natives. Every native is required to have a pass upon entering the territory. The pass officer must keep a register of natives above the age of fourteen living within his district, stating certain particulars. Provision is also made for their employment and contracts of service. The Government may erect rest-houses for the accommodation and rationing of natives seeking work in any district at a fee of one shilling per day. The Government is also to provide guard-rooms for the detention of natives suspected of having deserted their employment.

**Liquor Law.**—The gratis supply of intoxicating liquors by places of refreshment not holding a liquor licence is forbidden by No. 13.

**Ammunition.**—Permits are required by No. 15 for the possession of arms and ammunition, and penalties are imposed for their delivery by any means to natives.

**Volunteers.**—The constitution of a Volunteer force is provided for in

(*q*) Repealing, *inter alia*, No. 16 of 1901, *supra*, p. 419, and see *infra*, pp. 423, 424.

an Ordinance(*r*) which was not published until December 16, 1904. A special Court is to be constituted for disciplinary purposes.

**1903**(*s*)

## Ordinances passed—21.

**Education.**—A Director of Education is appointed by No. 1 in place of the Inspector of Education authorised by the Ordinance of 1899, (*t*) which is repealed. The regulations are appended in a schedule, and contain considerable modifications, including apparently the abandonment of the dual system. Special arrangements are made for schools for coloured children and natives.

**Criminal Law.**—The punishment for intent to commit rape, by No. 3, is hanging.

**Explosives.**—The Administrator is authorised by No. 5 to set apart places for the storage of explosives.

**Customs.**—No. 6 (*u*) is a consolidating Ordinance repealing previous legislation, (*x*) and providing for the admission of Southern Rhodesia into the Customs Union.

**Immorality.**—White women having illicit sexual connection with natives are rendered liable by No. 9 to five years' hard labour.

**Immigration.**—The object of No. 10 is the exclusion of undesirable immigrants, and follows the lines of legislation which has been found necessary in other parts of the Empire.

**Municipalities.**—No. 12 gives further powers to municipalities to make bylaws, deals with unsound food, and makes an allowance to the mayor of £250 for hospitality expenses.

**Pounds.**—No. 13 is a long consolidating Ordinance not promulgated until April 21, 1905, in which provision is made for the care of animals and the proceedings in cases of trespass.

**Bank Holidays.**—Ascension Day is no longer a Bank Holiday by the passing of No. 4. The non-business days are Sunday, New Years' Day, Good Friday, Easter Monday, Whit Monday, Victoria Day (being the 24th day of May), Rhodes' Day (being the 5th), and Founder's Day (being the 6th day of July), King's Birthday (being the birthday of the reigning Sovereign), Shangani Day (being the 4th day of December), and Christmas Day and the day following.

**Game.**—Permits may be granted by No. 15 (*y*) for the capture of elands, ostriches, zebras, and Burchell zebras for breeding and farming purposes notwithstanding anything contained in the Ordinance of 1899.

(*r*) See *infra*, p. 423.

(*s*) Contributed by C. E. A. Bedwell, Esq.

(*t*) See *supra*, p. 416.

(*u*) See *infra*, p. 423.

(*x*) Including No. 21 of 1899, *supra*, p. 416.

(*y*) Repealed by No. 13 of 1906, *infra*, p. 424.



**Police.**—The organisation of the police force is the subject of No. 21, repealing previous legislation. It is liable to military service in case of war. The duties of making regulations for the discipline of the force is entrusted to the Attorney-General. No member may become a hired servant or have any interest in a house for the sale of liquor.

**1904 (z)**

## Ordinances passed—22.

**Criminal Law.**—No. 4 provides that criminals sentenced in other territories with which there is a reciprocal arrangement may be imprisoned in Southern Rhodesia.

**Telegraphs.**—A licence is required from the Administrator under No. 6 for the erection of telegraph apparatus of any description.

**Patents.**—The law as to the granting of patents is embodied in No. 7. Its administration is entrusted to the Registrar, from whom an appeal lies to the Attorney-General. The term limited in every patent for its duration shall be fourteen years, but an extension may be granted on application to the Administrator.

**Explosives.**—The object of No. 8 is to prohibit the possession of explosives by natives and Asiatics.

**Animals Diseases.**—The law is consolidated in No. 9, (z<sup>1</sup>) which deals with the precautions to be taken for the prevention of the spread of rinderpest, scab, lung-sickness, glanders, and rabies, and other diseases in cattle.

**South African Customs Union.**—No. 14 (a) confirms the South African Customs Union Convention, 1903.

**Gaming.**—The suppression of gaming houses is enacted by No. 15.

**Savings Banks.**—The establishment of savings banks is authorised by No. 17. (b) The Savings Banks Advisory Investment Board is constituted to assist the Postmaster-General in that branch of his work.

**Fences.**—Arrangements are made by No. 18 for the repair of fences dividing property, and the payment of the cost by the tenants.

**Deserted Wives and Children.**—Husbands are compelled to maintain their wives and fathers their children by No. 19, in accordance with the usual procedure before a magistrate.

**Importation of Plants.**—In order to prevent the spread of diseases among plants or the dissemination of insects, the Administrator is given power by No. 20 to prohibit the importation of any suspected plant.

**Native Tax.**—The hut tax imposed in 1901 (c) is repealed by No. 21, and a tax of twenty shillings imposed on every male native.

(z) Contributed by C. E. A. Bedwell, Esq.

(z<sup>1</sup>) Repealing *inter alia* No. 5 of 1900 (*supra*, p. 417) and No. 7 of 1901 (*supra*, p. 419).

(a) Repealed by No. 12 of 1906, *infra*, p. 424.

(b) See *infra*, pp. 423, 425.

(c) See *supra*, p. 419.

If such native has more than one wife, or reputed wife, he shall pay a further tax of ten shillings for each additional wife.

### 1905 (*d*) Ordinances passed—13.

**Extradition.**—The surrender of fugitive criminals is provided for by No. 2.

**Volunteers.**—Various amendments are made by No. 13 in the Volunteer Ordinance, 1902. (*e*) The Army Act 1881 (*f*) is made to apply to the force.

### 1906 (*g*) Ordinances passed—17.

**Customs Protection (No. 1).**—This Ordinance empowers an officer of Customs to demand a bond from importers on notice being given of a proposal to increase a customs duty.

**Post-Office (No. 2).**—Regulations may be made by the Administrator for the insurance of letters, parcels, and packets forwarded through the post, and for the extension of the system to other countries.

**Post-Office Savings Banks (No. 3).**—This enlarges the power of investment of money in Post-Office Savings Banks (*h*) by allowing them to be placed on deposit for fixed periods in one or more of the banks now carrying on business in Southern Rhodesia.

**Native Reserves (No. 4) (*h*<sup>1</sup>).**—The Administrator is empowered to establish native reserve locations, in which natives may be required to reside. An exception is made in favour of natives in *bonâ fide* employment as domestic or other servants. Every native occupying a dwelling in the location is to pay for it such rent as the Administrator may fix, on pain of ejection for default. Headmen may be appointed for a location and regulations made as to buildings, ventilation and lighting, hospitals, schools, nuisances, animals, shops, passes, and other matters. No licences to be issued for the sale of intoxicating liquors in the location, nor is any intoxicating liquor to be brought into the location without a permit in writing from the Location Inspector.

**Administration of Estates (No. 5).**—This Ordinance amends the law, *inter alia*, by enlarging the power of a master as to private sale, subdivision of minors' immovable property and investments.

**Customs.**—No. 6 amends the law of 1903, (*i*) relating to the collection and management of customs duties. Any goods imported without payment or security for the duties are to be liable to forfeiture.

(*d*) Contributed by C. E. A. Bedwell, Esq.

(*e*) See *supra*, p. 421.

(*g*) Contributed by Edward Manson, Esq.

(*h*<sup>1</sup>) See *supra*, p. 420.

(*f*) 44 & 45 Vict. c. 53.

(*h*) See *supra*, p. 422.

(*i*) See *supra*, p. 421.

Goods bearing a false trade mark, counterfeit coin, obscene prints or photographs, are prohibited entering. Waggons containing imports are to follow prescribed routes.

Smuggling is made punishable with a penalty of £100. Large powers of search are given to the Customs officers. Any such officer taking a gratuity is to be liable to dismissal.

**Railways** (No. 7).—Persons travelling without a ticket, or in a superior class of carriage to what their ticket entitles them, or beyond the distance, are to be liable to pay the fare or difference, plus a booking fee, or be summarily removed. They may also be prosecuted, and, if convicted, be liable to a penalty of £2, or, in default of payment, imprisonment.

Transferring or falsifying tickets is also made punishable.

Regulations may be made by the Administrator prohibiting the throwing of stones, bottles, etc., from trains.

**Natives' Passes** (No. 8). (*i*<sup>1</sup>)—Natives found wandering without a pass beyond the limits of their districts, or deviating from the pass route, may be apprehended and brought before the nearest magistrate.

Employers must call for a native's pass and certificate of registration, and endorse the certificate with the terms of employment, and on discharge with the date of the discharge.

A native who has lost his certificate may obtain a new one.

**Transfer Duty**.—No. 9 reduces the duty on transfer of property from 4 to 2 per cent. on the purchase price.

**Coloured Labourers** (No. 11). (*i*<sup>1</sup>)—"Coloured labourer" means an aboriginal inhabitant of Africa south of the equator, and includes half-castes and their descendants by natives. Where such coloured labour constitutes 25 per cent. of the labour employed on a mine a fee of 1s. per head per month must be paid by the employer to the British South Africa Company. The sum so received is to be paid to the Rhodesian Native Bureau, to be used by the Bureau for collecting and distributing labourers.

**South African Customs Union Convention**.—No. 12 (*i*<sup>2</sup>) ratifies the above Convention, 1906, and imposes the tariff thereby agreed on.

**Game Preservation** (No. 13). (*i*<sup>3</sup>)—"Game" in this Ordinance, which consolidates the law, includes three classes: (1) birds (bustards, pheasants, partridge, grouse, etc.); (2) antelopes (hartebeest, waterbuck, gnu, etc.); (3) royal or big game (elephants, giraffes, hippopotamuses, rhinoceroses, ostriches, etc.).

Licences are to be taken out annually, and no person is to kill or hunt game without a licence. An ordinary licence is not to entitle the holder to kill any "big" game. A permission in writing for this purpose must be given by the Administrator.

(*i*<sup>1</sup>) See *supra*, p. 420.

(*i*<sup>2</sup>) See *supra*, p. 422.

(*i*<sup>3</sup>) See *supra*, pp. 415, 421.



The Administrator may also by notice protect any game in classes (1) and (2) from being hunted or destroyed for a period of five years. The cost of a licence to persons domiciled in Rhodesia is £5; to persons not so domiciled, £25. Occupiers may shoot big game if found destroying crops.

Eggs and the young of any "game" are likewise protected.

**Stamps (No. 15).**—Shipping agents are to take out yearly licences. The cost of a licence is £10.

**Precious Stones (No. 17).**—No person is to prospect or dig for precious stones without a permit—to be registered—from the British South Africa Company.

Every digger is, once a month, to make a return to the Mining Commissioner of the weight and value of the precious stones found by him.

"Salting" or depositing precious stones in any place with intent to mislead is punishable as fraud.

A digger who has under a permit pegged out his claim is, within thirty-one days, to register the same and to receive a certificate; 2s. 6d. per month is payable for each claim.

A digger may transfer or hypothecate his claim.

No person is to deal in diamonds unless licensed, and is then to deal only with authorised persons.

No diamonds are to be imported except through one of the duly declared ports of entry. Postal packets suspected of being sent by a person without a licence to deal in diamonds may be examined, and the contents, if found to be so sent, forfeited and sold.

## 1907 (*k*)

Ordinances passed—10.

**Post Office Savings Bank.**—No. 2 amends the Post Office Savings Bank Ordinance, 1904, (*l*) as to the transfer of Savings Bank accounts.

**Bills of Exchange (No. 4).**—This is an adoption of the recent English Act, No. 17, 1906. (*m*) A banker receives payment of a crossed cheque for a customer within the meaning of s. 80 of the Bills of Exchange Regulations, 1895, notwithstanding that he credits his customer's account with the amount of the cheque before receiving payment thereof.

**Administration of Estates (No. 6).**—This is an Ordinance of one hundred and twenty-nine Articles consolidating and amending the law relating to the administration of the estates of deceased persons, minors, lunatics, and absentees.

(*k*) Contributed by Edward Manson, Esq.

(*l*) See *supra*, p. 422.

(*m*) See *supra*, vol. i. p. 131.

Whenever any person dies leaving any property or leaving a will the nearest male relative is to deliver a formal notice of death to the Master of the Court.

Wills may be deposited with the Master. If not so deposited any person having a will in his possession is, on the death of the testator, to transmit the will to the Master. A warrant may be granted to search for stolen or concealed wills. In case of marriage in community of property the surviving spouse is to have an inventory taken and transmitted to the Master.

The estates of all persons dying either testate or intestate are to be administered and distributed according to law under letters of administration to be granted by the Master to the testamentary executor duly appointed by such deceased persons, or, in default of testamentary executors, to such person as shall be appointed executor dative. Arts. 40-66 prescribe in great detail the duties of executors. Arts. 69 and 70 deal with the estates of natives married by native custom; Arts. 71-112 with the estates of minors and absent persons. Arts. 113-129 contain a variety of subsidiary provisions.

**Municipalities (No. 7).**—The Ordinance provides machinery for determining whether the mayor shall be appointed by the Administrator or be one of the councillors of the municipality. Power is also given to the council of any municipality to require means of egress from buildings to be provided in case of fire.

**Mines and Minerals (No. 10).**—The object of this amending Ordinance is to secure the working of mining blocks or locations by the holders. It requires the holder, within six months of registration of the location, to execute at least thirty feet of development work, as much during the next six months, and sixty feet during every succeeding year. In evidence of the work having been done, he must obtain an inspection certificate from the Mining Commissioner, failing which the location is liable to forfeiture. "Development work" is defined by Art. 9 of the Ordinance.

A mining location may be worked for profit, on notice given to the Mining Commissioner. Art. 13 fixes a scale for the royalties payable on such working for profit. There are special royalties for special kinds of minerals.

**Stock and Produce Theft Repression.**—No. 5, which was not promulgated until February 7, 1908, consolidates the law on the subject. "Stock" is defined so as to include domesticated ostrich. The procedure against offenders is before the magistrates, who may give compensation for damages. If the criminal proceedings are quashed on review the right of the owner to take civil action is retained. Among

the provisions for carrying out the object of the ordinance is the following:—

No person shall purchase or sell for purposes of trade any produce between the hours of sunset and sunrise ; provided that the prohibition shall not apply to any person purchasing or selling produce at any public sale.

**Angora Goats and Ostriches.**—No. 12 prohibits the exportation of Angora goats, ostriches and ostrich eggs, with reciprocal arrangements for other South African Colonies which have done the same and imposed a punishment for their theft.



## 5. TRANSVAAL.

1901 (*a*)

Proclamations passed—40.

**Marriage and Succession.**—No. 1, after stating that it was not then desirable to issue letters of administration to executors, provides that the death notice required by Law No. 12 of 1870 shall be given to the resident magistrate, who is to appoint some proper person at a reasonable remuneration to frame the death notice and make the inventory required by that Law. The resident magistrate may provide for the safe custody of the property until a *curator bonis* has been appointed under Proclamation No. 12 of 1901.

By No. 2 legal effect is given to special licences to marry signed by the Military Governor of Pretoria or the Secretary or Legal Adviser.

By No. 21 the Administration is empowered to appoint temporarily a proper person to solemnise marriages under Law No. 3 of 1871 in districts in which a Court of a resident magistrate has not been established.

No. 22 empowers superintendents to solemnise marriages in burgher camps distant more than four miles from the Court of a resident magistrate, and to make provision for death notices and inventories.

**Gold Exportation.**—By No. 6 various restrictions placed on the transport and exportation of raw gold are removed. All gold deposited with banks is to be delivered up on application to the bank supported by affidavit by registered companies entitled. Banks and such companies may export gold; other persons and companies may make application to the Special Criminal Court which is authorised to adjudicate. All dealing with gold is subject to the laws of the late South African Republic.

**Possession of Property.**—No. 8 gives power to magistrates to make orders for delivering up of movable property, houses, or buildings, on affidavit of any person claiming that movable property, houses, or buildings belonging to him are unlawfully in the possession or occupation of any other person, unless the person in possession or occupation can satisfy the magistrate of his title. The Proclamation does not affect any other proceedings, civil or criminal.

**Inquests.**—No. 10 (*a*<sup>1</sup>) provides for the holding of inquests by resident magistrates. Justices of the peace, ascertaining that a dead body has

(*a*) Contributed by Israel Davis, Esq.

(*a*<sup>1</sup>) See *infra*, p. 447.

been found within their jurisdiction, but more than six miles distant from the Court, are to hold a preliminary inquiry and report thereon, and in all cases to give information without delay to the resident magistrate.

**Contracts for Mining Rights.**—By No. 12, in the case of contracts entered into before October 11, 1899, to purchase farms and other lands situated in the Colony, or to purchase or lease mining rights with or without the right of prospecting for precious stones, the period between October 11, 1899, and a date to be notified in the *Gazette* shall not be taken into account in calculating the period during which it was agreed that such contracts should be in force. All payments and acts to be performed in consideration of and for the preservation of rights acquired under the said contracts during the period, and all rights required to be exercised within the period, may be done as if the period between October 11, 1899, and the date to be notified did not exist. An exception is to be made in all cases where the non-compliance with the terms of the contract was due to the neglect of the person bound to comply, and was not caused by the state of war.

**Avoiding Transactions.**—No. 26 proclaims that any alienation of property, whether of lands, mines, or mining rights, within the Transvaal, and any interest therein of whatsoever nature, and any charges or encumbrances of whatsoever description declared, charged, or made by the late Government of the South African Republic subsequent to March 19, 1900, and any concessions granted subsequent to the said date, are null and void.

**Mortgages and Charges.**—No. 27(c) declares that after the date of the Proclamation (October 9, 1901) no exemption from interest in the case of mortgagors, not at that date in beneficial occupation, shall be claimed after such mortgagor shall obtain beneficial occupation, provided that no action shall be brought for the capital secured by the mortgage bond until a date to be notified in the *Gazette*.

**Vaccination.**—No. 23 gives powers to make regulations for the compulsory vaccination of natives in the labour districts of Johannesburg, Boksburg, and Krugersdorp.

**Fugitive Offenders.**—No. 25 gives effect to the Order in Council of August 8, 1901, extending the provisions of Part II. of the Imperial Fugitive Offenders Act, (d) 1881, to the Transvaal.

**Defaced Coin.**—No. 15 amends Proclamation No. 4 of February 6, 1901, by prohibiting the defacement of the King's coin or coin issued by the late Republic, or uttering defaced coin.

**Health Boards.**—No. 28(e) provides for the establishment of health

(c) See *infra*, p. 439.

(d) 44 & 45 Vict. c. 69.

(e) Repealed by No. 58 of 1903, *infra*, pp. 443-449.

boards with power to make bylaws for the regulation of, *inter alia*, fires, infectious diseases, obnoxious trades, street and public places, sewers, slaughter of animals, street traffic, etc. A schedule contains bylaws which are to be in force in any area in which a board is appointed until revoked or amended by other bylaws.

**Public Holidays.**—By No. 30 bills and promissory notes payable on a public holiday are to be payable, and in the case of non-payment may be noted and protested on the next following day on which a bill of exchange may be lawfully noted and protested. Similar provision is made as to notices of dishonour, etc.

**Betting Houses.**—No. 33 prohibits the keeping of a house, office, room or other place for the purpose of betting, etc. So much of Law No. 7 of 1890 as excepts lotteries on horse-racing from provisions of that Law is repealed, but the Proclamation does not extend to the course or other ground used for horse or other racing, lawful sport, game, or exercise.

**Native Law.**—No. 19 abolishes the penalty of lashes provided by Law No. 22 of 1895 and is by the Native Pass Law on Gold-Fields published in the *Staats Courant* of February 1, 1899, except for a contravention of s. 18 in the latter Law. The said Law is declared to be valid, but by No. 11 the "minimum penalties" for which it provided are abolished.

No. 35 relieves any ordained coloured minister of a recognised Christian denomination, any coloured person certified as a teacher or exercising a profession or trade, from the pass laws, subject to his obtaining a letter of exemption.

No. 32 vests in a Commissioner for Native Affairs the powers previously exercised by an official of the Republic.

No. 36 (f) absolutely prohibits the sale, barter, or supply, except for medical purposes, to any coloured person, of any wine, spirituous or malt liquor, methylated spirits, spirits of wine or any other intoxicating brew or mixture, including Kaffir beer, within six miles of a town or gold-field. For the first offence the penalty is loss of licence (if any) and not less than six months' and not more than twelve months' imprisonment and a fine not exceeding £250, and in default, imprisonment. The penalties are doubled on the second offence and increased substantially on subsequent offences. Coloured persons obtaining the liquors named are liable on conviction to be imprisoned for a term not exceeding three months. The offences are brought within the jurisdiction of the resident magistrate. Powers of search and seizure are extended to constables.

No. 37 provides for regulating the entry of natives into and their

(f) Consolidated in Ordinance No. 32 of 1902, *infra*, p. 442.



return or departure out of the Transvaal, for the protection of natives travelling into the Transvaal, and for the control of native labourers on public diggings, and contains regulations for passes.

By No. 38 persons procuring or undertaking to supply by themselves or through agents natives for work in the Transvaal are required to obtain a licence for £15 and to observe the regulations of the Proclamation. The Proclamation does not apply to any person obtaining labour for his own service or business exclusively, if the total number of natives employed by him does not exceed twenty at any one time.

**1902**(g) Proclamations passed—40 ; Ordinances passed—50.

**Government.**—By *Letters Patent*, dated August 2, 1901, the office of Governor and Commander-in-Chief of the Colony of the Transvaal is created, and provisions are made for the Government thereof. A public seal shall be kept by the Governor. The executive powers shall vest in an Executive Council, the members thereof to be appointed by the King, and to hold their places during pleasure. The legislative powers shall vest in the King, but there shall be a Legislative Council, whose resolutions, however, can be vetoed by the Governor, and whose Ordinances can be disallowed by the King through a Principal Secretary of State. Both Governor and Legislative Council shall in the making of any Ordinances observe all rules, regulations, and instructions issued by the King.

The Governor shall have power to make grants of land, to appoint judges and other officers, to grant pardon and remit fines, but he shall not have the power to banish persons for any other but political crimes. The South African Constabulary shall be under the High Commissioner.

In the *Instructions* of the same date it is provided that the Executive Council shall be similarly constituted, as formerly, of the following members, *ex officio*—viz. the Governor, the Lieutenant-Governor, the Colonial Secretary, Attorney-General, Colonial Treasurer, Commissioner of Mines, and Commissioner of Native Affairs. The Governor is entitled to add extraordinary members, and the Council shall not meet unless summoned by the Governor. The Governor alone shall have the power of initiative, and he is not to be bound by the advice of the Council.

The Legislative Council shall consist of the members of the Executive Council and such other persons as may be appointed by the King. The Governor may appoint extraordinary members. Every member shall have the right of initiative except on matters of revenue, which shall remain exclusively in the hands of the Governor.

All laws shall be styled Ordinances. Certain classes of Ordinances are excepted from the Governor's assent, and shall require the assent of the King, while provisions are made in cases of emergency and for private Ordinances.

The Governor shall be obliged to promote religion and education amongst the natives and to protect their persons and property.

Regulations are made for the exercise of pardon and the issuing of a blue-book.

These Letters Patent and Instructions were proclaimed by *Special Proclamations* dated June 21, 1902, and which came into operation on the same day. The numbers of the Ordinances run from that date.

**Lieutenant-Governor.**—No. 24 (Ordinances) transfers all powers and jurisdiction of the Governor of the Transvaal to the Lieutenant-Governor.

**Medical Practitioners.**—No. 1 (*h*) (Proclamations) requires all persons who wish to practise as a physician, surgeon, dentist, or chemist and druggist to obtain a licence from the Secretary of the Transvaal Administration.

**School Committees.**—No. 9 (*h*<sup>1</sup>) (Proclamations) abolishes the school committees existing under the former Government and vests all immovable property belonging to such committees in the Director of Education for the Transvaal.

**Registration of Deeds and Mining Rights.**—No. 10 (*i*) (Proclamations) provides for the keeping of records in the Deeds Office. It regulates the preservation of the records of the Registrar of Deeds of the late South African Republic, and maintains the established system of registration of all deeds of grant, transfer and mortgage of immovable property, ante-nuptial contracts, *kinderbewyzen*, notarial bonds and deeds, concessions and *mynpachts*, leases and servitudes, and the issue of certificates of registered titles. No registration shall take place without proof that all transfer duties shall have been paid to the Government. The records shall be open to the public for inspection, upon payment of the prescribed fees.

No. 35 (*k*) (Proclamations) and Nos. 6 and 21 (Ordinances) contain similar rules for the Registration of Mining Rights Office at Johannesburg, the preservation of all records in the office of the late Mining Commissioners and the registration of titles to, leases, and mortgages of mining rights and stands, and leasehold lots, and the issuing and renewing of all licences to mining rights and stands.

**Transfer Duty.**—Nos. 8 (*l*) and 27 (Proclamations) and 27 (Ordinances) fix a duty of £1 5s. per cent. *ad valorem* on the transfer of any immovable property if not by way of legacy or inheritance, and on the

(*h*) Repealed by No. 29 of 1904, *infra*, pp. 460-461.

(*i*) See *infra*, p. 445.

(*k*) See *infra*, p. 445.

(*h*<sup>1</sup>) See *infra*, p. 446.

(*l*) See *infra*, pp. 445, 464.

obtaining by grant or transfer of any lease of immovable property, mynpacht-claim for not less than twenty-five years or the natural life of any person named. Exemptions are made in cases of joint ownership, insolvency, and between husband and wife. Rules are laid down for the disclosure of the names of the principals at public or private sales. The latter have to be in writing. Leases of land for not less than ten years or the natural life of any person mentioned or for any mynpacht must be notarial.

**Incorporated Law Society.**—No. 18 (Proclamations) and No. 4 (Ordinances) create the Incorporated Law Society of the Transvaal, which is to take the place of the “Ingelyfde orde van Procureurs in de Zuid Afrikaansche Republiek,” its Council to consist of nine members. All persons applying for admission as attorneys, notaries, or conveyancers shall give notice to the chairman of the said council.

**Burial Grounds.**—No. 20 (Proclamations) authorises the Administrator to expropriate lands to be enclosed and maintained as burial grounds for certain of the British and Boer forces who died from wounds or otherwise in the late war.

**Letters Patent and Trade Marks.**—Nos. 22 and 29 (*m*) (Proclamations), in amending the Law No. 10 of 1898 relating to letters patent for inventions and trade marks, entitles the Governor to appoint a Commissioner of Patents, whose office shall be styled the Patent Office, and who shall issue letters patent. The provisions regarding the application for letters patent, the provisional and complete specification, their examination, the decision of the Commissioner and appeal therefrom, provisional protection, publication, opposition to the grant and procedure, sealing and term of patents, as well as regarding application for revocation of letters patent granted, and the consequent procedure, are amplified and extended. Special provisions are made for the assignment of inventions regarding instruments or munitions of war to the Secretary of War.

No. 23 (Proclamations) amends Law No. 6 of 1892 and provides for the registration of trade marks by the Commissioner of Patents, and who shall be styled Registrar of Trade Marks, on application by or on behalf of any person claiming to be the proprietor.

**Bills of Exchange.**—Nos. 11 (*n*) and 13 (Proclamations) extend the provisions of the Bills of Exchange Act, 1882, (*o*) to the Transvaal, but make certain modifications—*e.g.* that there shall be no days of grace in the Transvaal for bills of exchange and promissory notes.

**Stamp Duties.**—Nos. 12 and 26 (*p*) (Proclamations) and No. 14 (Ordinances) amend the law relating to stamp duties, and contain

(*m*) See *infra*, pp. 460, 474.

(*o*) 45 & 46 Vict. c. 61.

(*n*) See *infra*, p. 455.

(*p*) See *infra*, p. 462.



provisions regarding allowances for spoilt stamps, the mode of calculating *ad valorem* duties, the manner of affixing and cancellation of adhesive stamps, the receiving in evidence of documents which are not duly stamped, the stamping of bills of exchange and promissory notes, brokers' notes, insurance policies and receipts, charges of duty on limited liability companies, loan capital, and bank notes, and penalties against certain forgeries and fraudulent practices.

**Administration of Justice.**—No. 14 (g) (Proclamations) and No. 2 (Ordinances) re-establish the Supreme Court of the Transvaal at Pretoria, which shall consist of one Chief Justice and not less than three puisne judges to be chosen from among advocates admitted to practice in the said Court, or judges of the Supreme Court of any British Colony, and who shall be appointed by the Governor and hold their offices during good behaviour. There shall be one Registrar and one Master of the Court, to be appointed by the Governor. Advocates, attorneys, notaries, and conveyancers shall, as before, be admitted to practise by the Court, after having given proof to possess the due qualifications and taken the proper oaths in open Court. Any person admitted to practise as a barrister (advocate) or a solicitor (attorney) in England, Ireland, Scotland, Cape Colony, or who shall have practised seven years successively as advocate or attorney in any other British Colony, will be admissible for enrolment by the Court. In case of Colonial advocates, they will have to pass a previous examination, and give proof of not having acted in partnership with any attorney of the Court in which they practised.

The Roman-Dutch law, except in so far as it is modified by legislative enactments, shall remain the law of the Colony.

The Supreme Court shall continue to be a Court of Review of proceedings of inferior Courts on the grounds of incompetency, malice, or corruption of the judge, and irregularity.

The Supreme Court shall also continue to be a Court of Appeal from all decisions by the judge in chambers, the Witwatersrand High Court, and all district Courts.

The Court shall be composed, as of old, in all civil proceedings in first instance of two members, in appeal of three members or more. Appeal shall lie from the Supreme Court of the Transvaal to the Privy Council.

All rules and orders of the High Court of the late South African Republic are maintained, to be in force until repealed or amended by the Supreme Court with the approval of the Governor and after publication in the *Gazette*.

The language to be used in Court shall be English, but any Court

in the Transvaal shall be entitled to allow the use of the Dutch language in civil and criminal proceedings whenever such is considered necessary for the better and more effectual administration of justice.

The Witwatersrand High Court shall consist of one judge of the Supreme Court, and shall have, within an area defined in Government Notice 117 of 1902 (*r*), the same jurisdiction, powers, and authority as the Supreme Court of the Transvaal, save appellate jurisdiction and the power of reviewing the proceedings of inferior Courts. Rules and orders to be framed by the Supreme Court.

All jurisdiction in civil matters vested in the Special Criminal Courts at Pretoria and Johannesburg by s. 11 of Proclamation No. 6 of 1901 is abolished.

No. 12 (*s*) (Ordinances) constitutes the Supreme Court of the Transvaal at Pretoria a Court of Appeal from the decisions of the High Court or any Circuit Court of the Orange River Colony in all civil cases as well as in such criminal cases as shall have been provided by law or reserved by the Court or judge for the determination of questions of law.

No. 19 (Proclamations) regards the Special Criminal Courts of Pretoria and Johannesburg established by Proclamation No. 6 of 1901, and amends s. 8 thereof by making new regulations for appeal in criminal cases from those Courts to the Supreme Court at Pretoria.

No. 21 (*t*) (Proclamations), amended by No. 47 (Ordinances), replaces the former landdrosts' permanent Courts of Resident Magistrates in the district of Pretoria and eight other districts, with power to the Governor to increase their number, and also to establish periodical Courts at such other places as he shall consider necessary (*u*). The Governor shall from time to time appoint one or more assistant resident magistrates where necessary. Such Courts shall be Courts of Record, and the resident magistrates shall, as far as not otherwise herein provided, exercise all the jurisdiction and powers, discharge all the duties and enjoy all the privileges of the former landdrosts. The jurisdiction of such magistrates shall comprise in civil cases (1) with regard to persons, all actions brought against persons residing or carrying on business within their particular district, or against persons residing elsewhere if with reference to land situated within such district; (2) with regard to things, all actions founded on "liquid documents" to the amount of £500 and interest, other claims where the value of the matter in dispute does not exceed £100, and actions of ejectment against occupiers of land, tenements, or premises situate within such district. They shall have the power to grant arrests and

(*r*) *Government Gazette*, April 15, 1902.

(*s*) See *infra*, p. 457.

(*t*) See *infra*, pp. 442, 447, 457.

(*u*) See *Gazette*, November 28, 1902.

interdicts, but in cases above their ordinary jurisdiction such orders shall only be provisional and be returnable in the Supreme Court of the Transvaal. Their judgments shall be executable against the movable and immovable property of the debtor or by civil imprisonment, and, if outside their jurisdiction, with the endorsement on writ or warrant by the magistrate in whose district execution is required. Appeal from their decisions shall lie to the Supreme Court. Certain cases may be brought in first instance to the said Supreme Court, though they fall within the magistrate's jurisdiction. Law agents may be admitted to practise in the said Courts by such magistrates, and shall be under their jurisdiction. Advocates and attorneys admitted to practise in the Supreme Court are admitted *ipso jure*.

In criminal matters they shall have jurisdiction in all cases of crime and offence wholly or partly committed within their district or within two miles from the boundary, and which are not punishable by death, transportation, or banishment from the Colony. Their power of punishment shall, however, be limited to fines not exceeding £75 or imprisonment with or without hard labour for a period not exceeding six months or by whipping privately in prison not exceeding twenty-five lashes, and in case of juvenile offenders fifteen cuts with a cane, except if specially empowered by law to exceed these limits. All sentences to three months' imprisonment or more, a fine of £25 or more, and to any number of lashes, shall be under review of the Supreme Court, to which also appeal shall lie from any conviction, besides review on points of law.

Special mention is made of the *Chief Magistrate of the District of Witwatersrand* and the two civil magistrates at Johannesburg.

A *Native Court* is established by this and No. 40 (Proclamations) at Johannesburg for the Witwatersrand district, to be holden before a special magistrate. Assistant magistrates of the Native Court may be appointed, and the magistrate may be appointed by the Governor to hold a temporary or periodical Native Court elsewhere. The Court shall have jurisdiction criminally to try all contraventions by coloured persons of provisions of laws applicable exclusively to such persons, all offences against the laws relating to master and servant (if one of the parties is a native), the Native Passes Proclamation and the regulations thereunder, and civilly over all matters in dispute between coloured persons falling within the jurisdiction of a Court of Resident Magistrate.

Schedule B sets out the rules, orders and regulations to be observed in any of the said Resident Magistrate and Native Courts.

No. 25 (Proclamations) withdraws the divorce suits among natives from the Native Court and brings them in the same Court and with the same procedure as if the parties thereto had been white persons.



**Juries.**—No. 10 (Ordinances) amends the existing rules relating to juries in criminal cases, and qualifies and obliges every white man between the ages of thirty and sixty years who is owner or occupier of any immovable property valued at not less than £300, or receives a salary or wages amounting to not less than £150 a year, and who is not disqualified or exempted by the terms of the Ordinance, to serve as a juror. Jury lists shall be made at the beginning of every year and revised by the resident magistrate and a special Court. Several penalties are set out for not obeying summons to serve, falsely claiming exemption or illegally being excused by the sheriff, for bribing jurymen, removing or defacing or in any way falsifying jury lists, etc.

**Law of Evidence.**—No. 16 (Proclamations) amends the law of evidence to be administered in the Courts of the Transvaal. Provisions are set out regarding the competency of witnesses in civil and criminal cases, the advisability or inadvisability and relevancy or irrelevancy of evidence, the mode of proving certain facts and matters, the production of documents and books, the depositions of absent and testimony of deceased witnesses, and their excusation and privileges. In all cases not provided for in this Ordinance the rules of evidence administered by the Supreme Court of Judicature in England shall be followed. (Formerly the rules of evidence administered by the Supreme Court of Cape Colony were followed, as is the case in the Orange River Colony).

**Justices of the Peace.**—No. 15 (Ordinances) fixes the maximum punishments which may be inflicted by resident justices of the peace in accordance with the provisions of Law No. 7 of 1894 at a fine of £25 or imprisonment with or without hard labour of one month.

**Sheriffs.**—No. 17 (Proclamations) maintains the office of sheriff in the Transvaal, whose duty it is to serve writs and summonses, to execute sentences and judgments and all other orders, commands, and processes of the Supreme Court and the Circuit Courts of the Colony, and to detain in prison all persons committed to his custody. The sheriff is to appoint deputy sheriffs. Provisions are made regarding the execution of civil judgments and of death sentences.

**Marriages.**—No. 31 (Proclamations) legalises certain marriages solemnised in the Transvaal under Law No. 3 of 1871 and Law No. 3 of 1897 by officers appointed by the Military Governor and certain ministers of religion.

No. 26 (Ordinances) legalises all marriages solemnised by landdrosts and ministers of the Gospel since September, 1, 1900, under the provisions of Law No. 3 of 1871.

**Lunatics.**—No. 36 (Proclamations) maintains the established principles relating to the custody of lunatics, including the criminals who

are detained during the Governor's pleasure, and those who are treated in private dwelling-houses. It makes additional provisions for the better administration of asylums, prisons, and private dwelling-houses. The Roman-Dutch curators for the care and administration of the lunatic's property are maintained, and their duties amplified. Provisions are made for the custody of lunatics brought into the Transvaal from neighbouring Colonies.

**Natives.**—No. 3 (Ordinances) maintains the provisions of Law No. 4 of 1885, and confers on Native Commissioners and Sub-Commissioners the powers and jurisdiction conferred by that Law on Commissioners and Sub-Commissioners of Natives. Criminals shall only be sentenced to lashes in case of second or subsequent conviction within three years, and none shall be inflicted without confirmation by a judge of the Supreme Court.

No. 20 (*y*) (Ordinances) imposes upon natives a consolidated tax of £2, to be paid by every adult male aboriginal native in the Colony, and a further tax of £2 for each wife whom he possesses above one.

No. 28 (Ordinances) entitles certain deserving natives to obtain a certificate of registration in lieu of a pass, and which shall exempt them from the operation of the existing Law relating to passes.

No. 43 (Ordinances) prohibits natives from being out between the hours of 9 a.m. and 4 p.m. without special passes.

No. 44 (*z*) (Ordinances) amends the schedule of Law No. 4 of 1885 relating to the management of natives.

**Administration of Estates.**—No. 28 (*a*) (Proclamations) provides rules for regulating the administration of the estates of deceased persons, minors and lunatics, and of derelict estates. The Orphan Chamber and the office of Orphan Master are abolished, but the Master of the Supreme Court shall take the place of the latter, and the mode of procedure remains the same. Every notice of death shall in future be sent to the said Master, every will deposited and registered by him, all inventories of estates made after death forwarded to him. Letters of administration shall be granted by him to executors, testamentary and dative, foreign letters of administration given effect to, and tutors and curators appointed. The duties of executors, tutors, and curators are set out. The Guardians' Fund is maintained, but, as was already the case in Cape Colony, the Falcidian and Trebellian portions, as well as the *lex hac Edictali*, are abolished; no legitimate portion can furthermore be claimed as of right, and a number of tacit hypothecs shall disappear, together with the power of substitution and surrogation given to executors and tutors.

(*y*) See *infra*, p. 463.

(*z*) See *infra*, p. 477.

(*a*) See *infra*, p. 464.

**Gold Mines.**—No. 32 (Proclamations) abolishes the 5 per cent. tax on the net profits of gold mines, and institutes a tax of 10 per cent. on the annual net produce of all gold-bearing properties in the Transvaal in its stead, at the same time setting out in what manner such annual net produce shall be calculated.

**Post Office Savings Banks.**—No. 33 (Proclamations) repeals Law No. 9, 1892, and Law No. 6, 1893, and establishes new rules and regulations relating to the Post Office Savings Banks.

**Interest on Mortgage Bonds.**—No. 32 (Proclamations) extends the provisions made by Proclamation No. 27 of 1901 (*b*) by declaring that, independent of the legality or illegality of the Proclamation issued by the Government of the late South African Republic, and dated October 25, 1899, interest on mortgage bonds would be payable from June 1, 1902, and that actions at law for recovering the capital sum of any mortgage bond included in the said Proclamation might be brought and maintained after January 1, 1903.

After the passing of this Proclamation the Supreme Court at Pretoria declared the said Proclamation of October 25, 1899, to be invalid *ab initio*. (*c*) No. 42 (Ordinances) deals with the difficulty thus created, and postpones all actions on bonds passed before October 25, 1899, upon which interest during the war period was still due; and actions for the recovery of capital sums secured on mortgage bonds which were passed between October 25, 1899, and May 31, 1902, are not to be brought before January 1, 1904. Interest is to be payable on the deferred interest from June 1, 1902.

**Arrear Licence Moneys.**—No. 11 and No. 18 (Ordinances) overrule the effect of a judgment of the Supreme Court, and exempt all holders of claims and stands from the licence moneys, or such share of the licence moneys as are due to the Government on such claims and stands, for any portion of the period of the war during which they had not the beneficial occupation thereof, and regulates the manner in which the owner shall be able to recover such share of the said licence moneys as are due to him for any portion of the same period.

**Volunteer Corps.**—Nos. 5 and 38 (*d*) (Ordinances) make provisions for the formation, discipline, and maintenance of Volunteer Corps.

**Arms and Ammunition.**—No. 13 (*e*) (Ordinances) regulates the possession of arms and ammunition. All inhabitants other than naval and military officers require a licence (which is at any time revocable) to possess and carry such arms and ammunition as set forth in the

(*b*) See *supra*, p. 429.

(*c*) *Cohen, Sasserath, and Kotzen v. Christian*, [1902] T. S. 233.

(*d*) Repealed by No. 37 of 1904, *infra*, p. 463.

(*e*) See repealing Ordinance No. 10 of 1907, *infra*, p. 430.



licence, the ball ammunition not to exceed two hundred rounds. Dealers in or manufacturers of arms and ammunition require a special licence, and may not sell to any others but licensees, while they require permits for the transportation of arms and ammunition throughout the Colony. The licences are granted for a year by the resident magistrate or magistrates specially appointed, but are at any time revocable by the Lieutenant-Governor. Penalties upon contravening these rules are fixed at a maximum of one year's imprisonment or a fine of £250. Registers shall be kept for all licences issued. Any lands, houses, places, waggons or other vehicles may be stopped and searched for any hidden arms and ammunition by or by order of a resident magistrate, justice of the peace, or officer of police, and persons found to be in unlawful possession of any arms and ammunition may be arrested without warrant. A special permit is required for the importation of arms and ammunition, and any importer not being a licensed dealer shall be required to obtain a licence within seven days after such importation. Rifles and ball ammunition shall be imported by the Government and stored in depôts or magazines, and the persons in charge of such magazines shall be allowed to sell these articles to holders of special licences for such purpose. The resident magistrates and the persons in charge of such magazines shall register the names of all persons to whom such special licences have been granted and rifles and ammunition sold. Special permits may be granted for the importation of sporting rifles and ammunition for the importer's own use.

Dealers in arms, ammunition, or explosives require a special annual licence, and may not sell to any persons but holders of licences, on pain of imprisonment with or without hard labour for a period not exceeding three years, or a fine not exceeding £1000. The licence shall be displayed on some conspicuous place on the walls outside, over or near the door of the premises, and no such licence shall be transferable without the sanction of the Colonial Secretary. All gunpowder in possession of a licensed dealer beyond a quantity of fifty pounds shall be stored in some magazine, and a special permit from the resident magistrate shall be required to receive from the person in charge of the magazine a quantity not exceeding fifty pounds in weight. Licensed dealers shall keep books of their transactions and render accounts to the resident magistrate; the books to be open for inspection by police officers.

Licences for the possession of any arms other than a rifle may be issued by the Lieutenant-Governor to natives or other coloured persons.

**Customs.**—No. 22 (Ordinances) repeals Proclamation No. 3 of 1902, and whilst waiting for the time when the Transvaal shall be able to

enter a South African Customs Union without sacrificing what the Government regard as the vital interests of the Transvaal—reduction in the cost of food-stuffs and the necessities of industrial production—makes the following provisional amendments of Law No. 4 of 1894. Public stores and articles imported or taken out of bond for the exclusive use of the Government, or for the exclusive and personal use of any member of H.M. regular forces, shall be free of duty. The duties on the classes of such goods (other than those which are already admitted free of duty under the existing tariff) with which the Colony has practically to be refitted, and the importation of which, for some time to come, must be above the normal rate, are abolished—viz. agricultural implements, metals, cement and wood (building materials), plants, and machinery. Certain special duties, *e.g.* on coal, oats, oat-hay, etc., are repealed, while others, *e.g.* on chocolate and cocoa, coffee, milk, confectionery, including jams, etc., preserved fruits and pulp, matches and wax lights, have been lowered. In order to make good a portion of the loss suffered therefrom, the duties on wines, spirits, tobacco, cigars, and cigarettes have been increased. (*f*)

No. 23 (Ordinances) amends Law No. 4 of 1894 regarding the management of the customs of the Transvaal Colony. It contains provisions for the proper levying and payment of additional duties imposed under the new Ordinance and prohibits *inter alia* all goods of foreign manufacture, or any packages of such goods, bearing any marks or brands which purport to be the names, brands, or marks of manufacturers resident in the United Kingdom or any British possession. All duties shall be charged according to colonial weights and measures. The Governor shall have the power to declare which ports shall be ports of entry and export, and the roads and routes of conveyance. (*g*) The Governor shall also have the power to grant rebate on goods re-exported from the Transvaal Colony to any other colonial State or territory. The duties of importers for preserving invoices are set out and the duties of customs officers described. Rules are laid down for bonded warehouses and the storing of goods therein, and penalties provided for contravening the rules and regulations made by the Director of Customs for such warehouses. Further provisions are made for examinations and inquiries on oath to be made by the said Director, goods to be seized and forfeited, Courts which will hear cases under the Customs Ordinances, rules for the proceedings in suits for the recovery of penalties, for seizures of goods and their restoration by the Governor, and all general fines and punishments.

(*f*) See Government Notice 512 of 1902, *Gazette Extraordinary* of October 8, 1902.

(*g*) Exercised as to ports of entry and export by Proclamation No. 8 Admn. 1902, dated October 4, 1902 (*Gazette* of October 8, 1902).

**Liquor Laws.**—No. 32 (*h*) (Ordinances) amends Law No. 19 of 1898 regulating the sales of wines, spirituous and malt liquors. The different licences, wholesale and retail, to be obtained are specifically enumerated, the number of retail licences being limited to one for every 250 male inhabitants. The former Licensing Courts are maintained, as well as the jurisdiction of the resident magistrates and assistant resident magistrates for all offences under this Ordinance, which forms one of the extensions of the magistrates' jurisdiction (*i*) provided for in Proclamation Transvaal No. 21 of 1902. (*k*)

No pay of wages to servants or workmen shall be allowed on licensed premises, and such premises shall be open for search by police officers, with the consent in writing of the resident magistrates. The provisions of Proclamation Transvaal No. 36 of 1901 (*l*) regarding the prohibition of sale of liquors to the natives are consolidated with this Ordinance. This prohibition shall, however, not affect Kaffir beer containing less than 3 per cent. alcohol, if brewed on premises of any person or company employing more than fifty coloured labourers.

Liquor traffic inspectors and sub-inspectors shall be appointed whose duty it will be, with the assistance of a special detective police force, to see that the provisions of this Ordinance be carried out. Resident magistrates may restrict the sale of liquor for certain periods to persons thrice convicted of drunkenness and certain other individuals. Local option shall be introduced—*i.e.* the sale of liquor shall be totally prohibited in any village, town, or ward of a municipality if so decided by the majority of the male white population above twenty-one years. Such sale can by the same majority be placed under the exclusive control of any local authority, company, or association formed with the object of devoting any profits made to some public purpose.

**Prisons.**—Nos. 30 and 36 (Ordinances) provide for the appointment of a governor and deputy governor of the Johannesburg and Pretoria prisons.

**Martial Law.**—No. 38 (*m*) (Ordinances) withdraws martial law from the Colony from and after "the date of this Ordinance taking effect," and provides indemnity for all acts in good faith advised, ordered, and done by or at the instance of the Governor, Lieutenant-Governor, or the officer for the time being commanding His Majesty's forces, and confirms all sentences pronounced by military Courts, all arrestations

(*h*) See *infra*, p. 444.

(*i*) The other extension is under Law No. 4 of 1891 for the prevention of stock thefts and the protection of owners of cattle.

(*k*) See *supra*, p. 435.

(*l*) See *supra*, p. 430.

(*m*) See *infra*, p. 475.



made for high treason, and recognisances taken during the existence of martial law.

The second part contains special provisions for public safety by allowing persons reasonably suspected of having committed treason to be arrested without warrant, buildings on reasonable suspicion of containing documents of a seditious or treasonable character to be searched, letters to be opened, and stating the penalties for speaking seditious words, doing riotous acts, publishing seditious libels, or being part to seditious conspiracies. Permits for entrance into the Colony remain to be required, except by those who are specially exempted, and persons found to have entered the Colony without lawful authority as well as persons considered dangerous may be directed by the resident magistrate of the district in which he resides to leave the Colony.

**Concentration Camps.**—No. 39 (Ordinances) authorises the Lieutenant-Governor to maintain concentration camps during a further period of six months, and provides for the removal of military structures.

**Expropriation of Lands.**—No. 5 (Proclamations) regulates the acquisition by the Governor of property of private persons within the Colony for public use by voluntary or compulsory sale, and the compensation to be given for the same—such compensation to be mutually agreed upon between the parties, or otherwise to be settled by arbitration.

**Crown Lands.**—No. 40 (*n*) (Ordinances) creates a Land Department and Land and District Commissioners, to be assisted by Land and District Boards respectively, for the disposal of Crown lands by public auction and private sales. Rights to minerals and mineral properties shall be reserved for the Crown in any case.

**Land Settlements.**—No. 45 (Ordinances) entitles the Lieutenant-Governor to set apart portions of Crown lands for allotments to applicants who require lands for their own use and will reside on them, either under licence at a valued price (the purchase money being payable by sixty half-yearly instalments) or under lease for five years. All rights to minerals and mineral products are reserved, but the licensee or lessee shall be bound to cultivate his holding and to plant trees. He shall be under inspection of the Land Commissioner. After the expiration of the licence and fulfilment of the stipulated conditions, the licensee shall be able to obtain a Crown grant. Advances shall be made to sellers under certain conditions. Among the applicants, those who shall have served as members of the South African Constabulary or in any of His Majesty's forces for not less than twelve months shall have preference.

**Naturalisation.**—No. 46 (*o*) (Ordinances) attaches the capacity of

(*n*) Repealed by No. 57 of 1903, *infra*, p. 453.

(*o*) See *infra*, p. 459.

becoming naturalised to a residence in the Transvaal or service of the Crown for a period of five years within such limited time as shall be fixed by the Lieutenant-Governor. Proof of residence shall be given by the resident magistrate or the justice of the peace. By Government Notice 170 of 1902 (*p*), such limited time was fixed by the Lieutenant-Governor at ten years.

**Central South African Railways.**—No. 25 (*q*) (Ordinances) gives power to the Lieutenant-Governor to from time to time frame bylaws for the regulations of the management and working of the Central South African Railways, and maintains the rules and regulations at the time in force between the South African Republic and the Nederlandsche Zuid Afrikaansche Spoorweg Maatschappij (Netherlands South African Railway Company).

**Cattle Diseases.**—No. 17 (*r*) (Ordinances) provides regulations against the spread of Rhodesian red water among stock in the Transvaal.

**Game.**—No. 29 (*s*) (Ordinances) re-enacts the provisions of Act No. 5 of 1894 for the preservation of game with certain amendments, and leaves it to the Lieutenant-Governor to fix the close time session for any district.

**Protection of Cattle.**—No. 35 (*t*) (Ordinances) prohibits the slaughtering of cows, heifers, and calves, and the sale of the meat thereof, during a period of two years.

**Telegrams.**—No. 48 (Ordinances) protects any newspaper telegrams from publication within seventy-two hours.

**Newspapers.**—No. 49 (Ordinances) provides for the registration of newspapers at the office of the Colonial Secretary.

## 1903 (*u*)

Ordinances passed—69.

**Liquor Laws.**—No. 2 amends s. 36 of the Liquor Licensing Ordinance No. 32 of 1902, (*x*) and No. 17 provides a further amendment, rendering it lawful for any receiver of revenue, without requiring any payment or any certificate of any Licensing Court, to issue licences for the sale of liquor to police and Volunteer corps canteens within his district.

No. 68 authorises the sale of malt liquor to persons employed in railway construction (Railway Employees' Liquor Licence) and further amends the Liquor Licensing Ordinance Transvaal No. 32 of 1902.

**Explosives.**—No. 4 (*y*) amends Law 27 of 1896 on explosives by

(*p*) *Gazette* of February 27, 1903.

(*q*) Repealed by No. 20 of 1903, *infra*, pp. 450–451.

(*r*) See *infra*, p. 455.

(*s*) See *infra*, p. 455, and repealing Ordinance No. 6 of 1905, *infra*, p. 464.

(*t*) See *infra*, p. 455.

(*u*) Contributed by W. R. Bisschop, Esq., LL.D.

(*x*) See *supra*, p. 442.

(*y*) Repealed by No. 4 of 1905, *infra*, p. 463.

making the provisions of Arts. 51 to 80 of that law regarding the storage and use of explosives in work applicable to factories of explosives, and by providing at the same time that the Lieutenant-Governor shall have power to frame rules (to be published in the *Government Gazette*) for the protection of life and property in such factories and for regulating the importation, removal, and storage of safety fuse.

**Registration of Deeds and Mining Rights.**—No. 6 amends Proclamation No. 35 of 1902 (z) by substituting terms for the filing of diagrams of mining rights and of stands, by fixing penalties for not doing so, and by providing for the appointment of deputy registrars.

No. 65 amends the Deeds Proclamations Transvaal No. 10 of 1902, (a) and incorporates with it the practice in the Deeds Office of the late South African Republic in cases where land was proclaimed a township and was divided into "erven" which were numbered and shown in a general plan of the town filed in the said Deeds Office, viz. to keep register of the said "erven" and to assign a separate folio to each "erf," and thereupon to treat the said "erven" as being duly registered as such, and to require on transfer of the said "erven" a separate deed of transfer for each "erf."

It further enacts that every notarial deed contemplated by s. 14 of Law No. 7 of 1883 and s. 16 of Law No. 20 of 1895 (Mineral Rights) and every notarial lease executed subsequent to Proclamation Transvaal No. 8 of 1902 (b) shall in future not only be registered separately, but a note thereof shall also be made against the title deeds of the properties affected thereby.

**Criminal Procedure Code, 1903.**—The law relating to criminal procedure in the Transvaal has up to the present been the same as that in Cape Colony, Ordinance No. 5 of 1864 having been taken almost verbatim from the Cape Acts. It is codified in No. 1.

The provisions of the Cape Law has almost in their entirety been incorporated in this Code, but the Cape Law, however, only deals with criminal procedure up to committal for trial, and it only forms about one-fourth of the Code, the remaining three-fourths being taken mainly from the Queensland Criminal Code of 1899 and the Canadian Criminal Code of 1892, both of which deal with procedure as well as substantive law. Some of the provisions of the Indian Code of Criminal Procedure, 1898 have also been utilized, but not to any great extent, as it was considered desirable to follow as far as practicable models derived from those portions of the Empire possessing self-government.

**Trigonometrical Survey.**—No. 11 gives facilities to the Superintendent for the Trigonometrical Survey of the Colony for carrying out

(z) See *supra*, p. 432.

(a) Ibid.

(b) Ibid.



such survey and for the erection and preservation of trigonometrical beacons.

**Land Surveyors.**—No. 55 (c) repeals Proclamation No. 4 of 1902 and makes provisions for the due qualification of land surveyors.

**Public Education.**—No. 7 (d) provides for the establishment of a Department of Public Education under the Director of Education, and for the establishment, inspection, and control of schools. The Lieutenant-Governor shall have power to include in these schools elementary and high schools, training schools for teachers, technical schools for mining and agriculture, schools for the mentally or physically defective, reformatory schools, and such others as may from time to time be found necessary. Bursaries and scholarships may be provided, and also grants for establishing hostels and orphanages and the foundation of public libraries. Teachers are obliged to hold certificates. Tuition may be given free. Religious instruction, not exceeding two hours a week, shall be given in elementary schools, while at the wish of the parents provision may be made for supplementary religious teaching as well as for exemption from attending the classes for religious instruction.

The Dutch language shall be taught, if requested by the parent or guardian, but for not more than three hours a week, or—if religious teaching in the Dutch language be required as well—for not more than five hours a week altogether.

Private schools must be registered, and quarterly returns given to the Department of Public Education of the number, names, and qualifications of the teachers employed and of the attendance of scholars. The sanitary regulations laid down by the Department of Public Health shall be observed and the schools shall be open to inspection. The teachers are required to hold certificates.

Local consultative and advisory committees may be appointed by the Lieutenant-Governor.

**Administration of Justice.**—No. 10 (e) provides for the extension of the jurisdiction of the Supreme Court in criminal matters; the Supreme Court to have jurisdiction over all offences triable within the Colony and to be a Criminal Court of Appeal.

The Witwatersrand High Court shall have jurisdiction over all offences committed in the Witwatersrand district.

Further provisions are made for the holding of Circuit Courts, the Colony to be divided in two or more Circuit Districts, and the Circuit Courts to be held at least twice in every year. The Courts shall be Courts of Record and have criminal jurisdiction. The records shall be

(c) Repealed by No. 8 of 1904, *infra*, p. 461.

(d) See *supra*, p. 432, and repealing Ordinance No. 25 of 1907, *infra*, p. 477.

(e) See *supra*, p. 434.

removed to the Supreme Court within one month of the close of each Circuit Court.

Appeals in civil cases shall lie from the Circuit Courts to the Supreme Court in a similar manner as provided for the Witwatersrand High Court, but neither of them shall have any appellate jurisdiction. Rules and regulations shall be framed by the Supreme Court.

Certified copies of records shall be accepted in the Supreme Court as *prima facie* evidence of such records.

No. 15 authorises resident magistrates to admit accused persons to bail in cases summarily tried under their ordinary or special jurisdiction. The provisions of ss. 106-13 of the Criminal Code, 1903, regarding recognisances are made applicable to these magistrates' Courts.

No. 16 (f) confers all the powers and jurisdiction of a resident magistrate as provided by Proclamation No. 10 of 1901 to the magistrate and assistant magistrate of the Native Court of the Witwatersrand District.

No. 35 regulates the pensions of the judges of the Transvaal Supreme Court, who are entitled to retire at the age of sixty or earlier in case of permanent infirmity. The rate of pension depends on the number of years of service, with a minimum of ten years, and shall not be less than one-half nor exceed two-thirds of the average salary of the three years immediately preceding such retirement. In case of retirement within ten years of service on the ground of infirmity, the rate of pension shall be left entirely to the Lieutenant-Governor for the time being.

Special provision is made for the pensions of colonial judges transferred to the Transvaal Bench and Transvaal judges who are transferred to other Colonies.

No. 36 gives the magistrates power to punish for contempt of Court committed in the magistrates' Courts, under the powers conferred by the Magistrates' Courts Proclamation Transvaal No. 21 of 1902. (g)

**Wills.**—No. 14 regulates the execution of non-notarial wills made after January 1, 1904, and decides the competency of witnesses assisting the execution of such wills, therewith repealing Law No. 7 of 1895 regarding the attestation of certain documents, so far as it relates to wills. It also provides that in wills which are notarially executed it shall no longer be obligatory for the notary public to read over the will to the testator or testatrix in the presence of the subscribing witnesses.

**Legislative Council.**—No. 34 defines and declares the powers and privileges of the Legislative Council. Freedom of speech in debates or proceedings, unimpeachable in any Court of law, is granted to

(f) See *supra*, p. 428.

(g) See *supra*, p. 435.

every member of the Council. The Council shall have power to order by summons the attendance of witnesses and to punish for contempt shown to any such orders. Warrants shall be issued by the President, and the sheriff and his officers and all constables and other persons shall be obliged to assist in the execution of such warrant. Persons creating, or joining in, any disturbances in the Chamber during the Council meetings may be arrested without warrant, while punishment is provided for the witnesses who are thus summoned before the Council, and who wilfully and corruptly give false answers.

**Municipal Councils.**—No. 38 (*h*) provides rules for elective municipal councils. It sets out the qualification of councillors, who shall annually elect a mayor from among them. The councillors shall not be paid, but they may vote an allowance out of the expenditure of the municipality to the mayor. All municipalities are divided into wards, and the list of voters, which is made up annually, shall contain the names of persons and companies owning or occupying rateable property of the assessed value of £100 or £300 respectively or occupying premises of the gross annual value of £24.

Each ward shall be represented by three councillors, who shall remain in office for three years, but so that every year one of them shall seek re-election.

Special provisions are made for the municipality of Johannesburg, where the councillors shall elect a deputy mayor to represent their mayor during his absence.

Further provisions are made for the nomination of candidates and polling; for the amount of electoral expenditure allowed; the election agent, whom every candidate must name, but he may name himself; the prevention of corrupt and illegal practices and illegal payment and hiring; the disqualification of electors; the limitation of time for prosecution under this Ordinance; and the hearing of election petitions.

Both the Pretoria and Johannesburg Municipal Councils, which shall be elected under this Ordinance, are to take over all the privileges, jurisdiction, rights, and liabilities of the councils existing at the time when this Ordinance comes into force.

**Municipal Corporations.**—No. 58 (*i*) repeals Proclamation No. 28 of 1901 (*k*) and makes provision for the establishing of municipality corporations and urban district boards in certain towns in the Colony. Either on the presentation of a petition signed by not less than three-fourths of the councillors of an existing municipality, or by not less than twenty-five persons registered as voters for the election of members of the board of health or the urban district board where

(*h*) See *infra*, pp. 462, 469.

(*i*) *Ibid*.

(*k*) See *supra*, p. 429.



no municipality exists, or of his own accord, the Lieutenant-Governor shall have power to declare any town or village to be a municipality, to assign a name to it, to describe the boundaries thereof, and to unite and sever municipalities or portions thereof.

Every municipality shall have a council with a town clerk and other officials; it shall have the general control of all public roads, parks, ferries, and squares and other public open places; it shall have power to acquire and construct tramways and other works and to lay out locations for natives; it shall have general powers for making by-laws regarding cemeteries, markets, fire brigades, libraries, public paths, pounds, slaughter-houses, and special powers for incurring the necessary expenditure, for making grants of money and others. It shall have the power to make bylaws regarding public health, buildings, sales, weights and measures, control of streets and traffic, water and light, and natives.

In case a bylaw affects any mining company in respect of the management of its mining operations or the control of the property on which such operations are carried on, such proposed bylaw shall be forwarded to the Chamber of Mines for its observations, and on its return it shall, together with such observations and the replies thereto from the municipal council, be forwarded to the Lieutenant-Governor, who shall not confirm or reject this proposed bylaw without first having heard the Commissioner of Mines.

Special powers are given to the council to enforce the observance of their bylaws, and regulations are set out for the providing of a revenue for the Council.

**Municipalities.**—No. 43 provides for the levying of rates in municipalities and districts. No. 64 confers on municipalities powers for the expropriation and acquisition of lands, and powers for carrying out sewerage and drainage work.

**Natives.**—No. 29 legalises marriages between coloured persons solemnised prior to the coming into operation of Law No. 3 of 1897.

**Finance.**—No. 31 provides for the raising of a loan of £35,000,000 for the acquisition of existing and the building of new railways, the clearing of deficits and former debts of the South African Republic, the payment of compensation to loyalists in Cape Colony and Natal, the payment of repatriation and compensation charges in the Transvaal and the Orange River Colony, land settlement expenses, and the carrying out of public works. The loan shall be a charge upon general revenues and assets and be redeemable at par within fifty years, while provision is made for the formation of a sinking fund.

No. 36 provides for the payment by the Transvaal to H.M. Imperial Government of a sum not exceeding £5,000,000 as a contribution to

the expenses of the late war, out of the net revenue derived by the Government of the Colony from the sale, lease, or other disposal of the right to mine gold, silver, or precious stones on Crown lands, and from any tax, licence, duty, or other impost on any gold, silver, or precious stones to be discovered in the Colony, or on the right to mine such minerals or the profits derived from such mining, such contribution to be made in annual payments.

**Sugar Duty.**—No. 8 and No. 12 enable the Lieutenant-Governor to suspend until September 1, 1903, the duty on sugar and all other articles the produce of South Africa imported into the Transvaal.

**Customs.**—No. 41 ratifies the Customs Union Convention of May 24, 1903, made between the several South African Colonies and set forth in the schedule annexed to the Ordinance. It fixes the duties to be paid on certain articles and the articles which shall be allowed to enter the Colony duty free.

A rebate—of 25 per cent. of the duty chargeable on certain classes of goods at an *ad valorem* rate, and of the whole duty in the case of certain goods liable to a duty at an *ad valorem* rate of  $2\frac{1}{2}$  per cent.—shall be granted on all goods and articles which are the growth, produce, or manufacture of the United Kingdom. The same rebate shall be granted to other British Colonies if they grant reciprocal treatment to goods imported from the South African Colonies.

The Lieutenant-Governor shall have power to suspend certain duties by Proclamation.

**Railway Police.**—No. 18 gives powers to all station-masters and station officials, permanent way inspectors, ticket inspectors and collectors, and all such like officers appointed by the Commissioner of Railways for the arrest, removal, and detention of all persons trespassing on the railway or its works or buildings, or contravening its laws, regulations, or bylaws.

It further enables the resident magistrates, on the application of the Railway Commissioner, to appoint railway constables for the preservation of the peace and the security of persons and property against any offences committed on the railway, its works or buildings, or the trains, roads, warehouses, lands, and premises belonging to the railway. Their dismissal shall equally be in the hands of the resident magistrates.

**Railways.**—No. 20 amends and consolidates various Volksraad Resolutions and regulates the acquisition by the Government of property of private persons within the Colony for railway purposes, and the compensation to be given for the same, such compensation to be mutually agreed upon between the parties, or otherwise to be settled by arbitration.

It is specially provided that no lines shall be constructed so as to injuriously affect the working of or the adit to any mines.

No. 60 regulates the working of railways in the Colony. It regulates the general administration of the company, the company's liability as carrier of passengers and as carrier of property, the punishment of offences which may be committed by railway servants or otherwise, the prevention of injuries to stock, the bringing of actions by or against the administration, the causes and effects of accidents, and the telegraph and postal services.

Ordinance Transvaal 25 of 1902 (l) and a number of First Volksraad Resolutions and laws of the late South African Republic regarding the management of railways are repealed.

**Concessions.**—(a) *National Bank of South Africa, Limited.*—No. 33 confirms a contract made between the National Bank of South Africa, Limited, and the Colonial Government modifying in certain respects the concession granted by the Government of the late South African Republic (and confirmed by the Volksraad of the said Republic) to the "Nationale Bank der Zuid Afrikaansche Republiek." On the one hand, the bank surrenders its exclusive privileges and concedes that its notes shall no longer be legal tender nor be free from stamp duty, nor that the bank shall be exempted from payment of licences on its branches. On the other hand, the Government waive their right of exercising any control or supervision over the management or administration of the business or affairs of the bank, or over any alteration or amendment of its memorandum or articles of association.

With the exception of the cancellation of the clauses mentioned in Schedules A and B to this Ordinance, the provisions of the former concession remain in full force. The bank retains the Mint, but shall not have the right to coin or issue British sterling from that Mint.

(b) *Spirituuous Liquors.*—No. 53 provides for the cancellation of the concession for the exclusive right of distilling or manufacturing spirituous liquors within the late South African Republic which was granted on July 22, 1885, and belonged to the Eerste Fabrieken Hatherley Distilling Company, Limited.

(c) *Explosives.*—No. 59 repeals a number of Resolutions passed by the First Volksraad in its sitting from the 1st to the 5th of September, 1893, and cancels the contracts made between the Government of the late South African Republic and L. G. Vorstman of Pretoria, and dated respectively October 25, 1893, May 24, 1894, and December 20, 1899, whereby an exclusive concession was given to "De Zuid Afrikaansche Fabrieken voor ontplofbare stoffen Beperkt" for the manufacture of explosives.

(l) See *supra*, p. 444.



It is moreover forbidden to import or export explosives without a permit for such importation or exportation from the Inspector of Explosives or his deputy. (*m*)

**Mining.**—No. 42 amends the Base Metal Law (No. 14 of 1897), and enacts that no persons shall be entitled to peg out a claim under Law No. 14 of 1897 on any ground held under a licence or mining title issued under Laws Nos. 15 and 22 of 1898 for the mining of base metals in the late South African Republic. It further provides that persons who possess such licences or mining titles under the said Law of 1898 on proclaimed or unproclaimed Crown lands shall be entitled to prospect and mine for any base metals or other mineral substances within the ground so held.

Certificates of being a recognised discoverer of such base metals may be given by the Lieutenant-Governor to any person who claims to have discovered base metals on Crown lands.

No. 50 provides for the issuing of certificates of competency to persons engaged in mining.

No. 52 authorises the Lieutenant-Governor to appoint a Commission for the purpose of reporting on the ownership of all mining rights and stands in the district formerly known as the Malmani Gold Fields, many of the books and documents relating to such rights and stands having been destroyed during the late hostilities.

No. 54 (*n*) makes provisions and regulations for the proper working of mines, for their works and machinery, thereby repealing the Mining Regulations of the late South African Republic laid down in Law No. 12 of 1898 and Law No. 11 of 1898 on Boilers and the use of Machinery. It also repeals the prohibition of Sunday labour laid down in Art. 2 of Law No. 28 of 1896, in so far as it applies to the working of a mine, but re-enacts the clause of Act No. 12 of 1898 regarding the carrying on of necessary work.

The Ordinance itself contains general provisions regarding the power of the Lieutenant-Governor to make general rules, and of the mine managers to make special rules, for the maintenance of order and discipline in the mines, regarding Sunday labour, the construction of railway sidings or tramways, the driving of connecting tunnels, the age of boys employed below ground—which is limited to fourteen instead of twelve years (as under the old Act)—the obstruction of, or disobedience to, orders of officials, and the penalties for contravention of the regulations and for acts or omissions causing danger or injuries.

(*m*) The Customs Ordinance No. 41 of 1903 exempts all blasting compounds from the payment of duty on importation from one South African Colony into another.

(*n*) See *infra*, p. 465.

The Regulations themselves are set out as appendices to the Ordinance, special regulations being enacted under s. 3 of the Ordinance as to the working of the mines, others as to the machinery (boilers) used in the mines, and thirdly such as contain instructions for mine surveyors in the Transvaal.

The provisions of the former Acts are much amplified and modified where necessary.

**Crown Lands.**—No. 57 (*o*) regulates afresh the establishment of the Department of Lands and Surveys, and the duties of the Commissioner of Lands, who shall be advised by a Land Board. It further provides for the disposal of Crown lands, the opening and keeping of special registers for such lands, and the reserves which the Lieutenant-Governor shall be entitled to make in favour of the Crown or for disposal in such manner as he shall deem best for the public interest. Such reserves may be placed under a Board of Management, which shall be entitled to make bylaws. Rights to mineral products and precious stones on or under any Crown lands remain reserved to the Crown in any case.

**Precious Stones.**—No. 66 (*p*) repeals the Diamond Law No. 22 of 1898, and re-enacts provisions for the prospecting for, digging and mining of, precious stones. It contains regulations regarding the prospecting on Crown lands and on private land which in the main points do not differ from those contained in the old Law, nor do those regarding the duties and rights of a discoverer of precious stones.

The Lieutenant-Governor shall have the right to proclaim any mine or mining area on Crown lands, but no mining area shall be proclaimed on any land without the consent of the owner thereof, nor shall any proclamation of a mine or mining area on private land be issued without the consent of the owner until after three months from the date of a notice given to him by the Commissioner of the Lieutenant-Governor's intention to issue a Proclamation.

The rights of owners of land are much extended. Their share of a proclaimed mine shall be in proportion to the proclaimed area, and the Crown shall be entitled to the remaining undivided portion. In case of Crown lands, the discoverer of precious stones shall stand in the position of the owner. Besides prospecting, the owner will be allowed to dig for precious stones even if the Lieutenant-Governor does not see fit to proclaim the mine. The owner may claim to work the mine, provided he commands the capital to do so, while the profits are divided between the owner of the mine and the Crown.

(*o*) It repeals the Crown Lands Disposal Ordinance Transvaal No. 40 of 1902, together with Laws No. 4 of 1893, No. 10 of 1892, and No. 15 of 1895 (see *supra*, p. 443).

(*p*) See *infra*, p. 444.

If the owner refuses to work the mine, or fails to find the necessary capital, or fails to notify the Commissioner within a proper time of his discoveries or fails to carry out the decisions of the Board for settling differences, then the Lieutenant-Governor may call for tenders, and if no satisfactory tenders are received, may lease the mine to the owner on such terms as may be agreed upon.

In the case of alluvial diggings the discoverer is entitled to fifty, the owner to one hundred, claims, but if no diggings are proclaimed within three months after the date of the certificate lodged with the Registrar by the discoverer of precious stones, the owner and the discoverer shall be entitled to dig for stones on the claims allotted to them.

After alluvial diggings have been proclaimed and the owner and discoverer have selected their respective claims, the remaining area shall be thrown open for public pegging if the Lieutenant-General deems such best, or else the claims shall be sold or otherwise disposed of. The rules for pegging are the same as those contained in Law No. 15 of 1898, which rules shall apply in so far as they are not specially abolished.

Regarding native compounds, the rules formerly in existence are maintained and amplified, especially those forbidding the payment of wages in food, directly or indirectly. In the new Ordinance are not taken over the provisions of Law No. 22 of 1898, viz. that all articles for trade in the compounds shall be provided by the shopkeepers in the district, and that such articles shall be sold at the actual selling price of the goods and without profit.

The remaining sections deal with stands and penalties.

**Diamonds.**—No. 63 applies with certain modifications the provisions of the Diamond Trade Act, 1882, of the Cape Colony to the Transvaal, and these supersede the provisions of Diamond Law No. 22 of 1898 of the late South African Republic. The Ordinance does not take over the Special Courts for Mining Offences of the Cape Colony Act. Offences under the Ordinance in the Transvaal will be brought before the ordinary Courts. Also are not taken over the provisions of the amending Act of the Cape Colony, No. 34 of 1888, "to make better Provision for the Protection of Natives and the Inspection of Compounds" in Griqualand West. Special penalties are provided for maliciously placing a rough or uncut diamond in the possession or on the premises of any person with intent that such person shall be convicted under the terms of the Ordinance.

**Indemnity of Burghers.**—No. 22 gives full force of law to the fourth clause of the Conditions of Surrender signed May 31, 1902, at Pretoria, and guarantees an indemnity to all burghers for any acts done in connection with the prosecution of the war.



**Protection of Cattle.**—No. 24 amends the provisions of Ordinance No. 35 of 1902 (*g*), by enabling the Commissioner of Lands to authorise the slaughter of animals which are no longer capable of breeding, or which are within an infected area as defined by the Diseases of Stock Ordinance, 1902. (*r*)

**Military Manœuvres.**—No. 25 facilitates and regulates the execution of military manœuvres, and the compensation to be paid for damage arising thereby to persons or property.

**Game.**—No. 30 (*s*) amends the Game Preservation Ordinance, No. 29 of 1902, (*t*) and gives the Lieutenant-Governor power to make rules and regulations for the proper carrying out of that Ordinance.

**Water.**—No. 32 (*u*) provides for the establishment of a Water Board for the purpose of supplying water to the Witwatersrand area, the Board to consist of eleven members chosen respectively by the Lieutenant-Governor, the Transvaal Chamber of Mines, the Town Council, and other local authorities of Johannesburg. Members may be interested in contracts with the Board, but will have to disclose their interest, and such disclosure shall appear in the minutes of the Board meetings. Wide powers are given to the Board for the carrying out of their duties, while the Lieutenant-Governor may from time to time alter the limits of supply and advance moneys to the Board for the proper carrying out of the provisions of the Ordinance.

**Irrigation and Water Supply.**—No. 67 facilitates the carrying out of surveys and of investigations which may be deemed necessary for the purpose of establishing irrigation and other works for supplying water to the inhabitants of the Colony.

**Public Holidays.**—No. 37 establishes ten public holidays and entitles the Lieutenant-General to from time to time appoint by notice in the *Gazette* any day to be observed as a public holiday. It amends accordingly the Proclamations No. 11 (Bills of exchange) (*x*) and No. 15 (Interpretation of Laws) of 1902.

**Protection of Deserted Wives and Children.**—No. 44 lays upon every person who is able, wholly or in part, to maintain himself or herself or his or her family, the duty of doing so on pain of fine or imprisonment. The resident magistrates may make an order for maintenance against a father or husband, whom he may summon to appear before him. An appeal will lie from such order to the Supreme Court.

Reciprocity rules are provided with regard to the other parts of His Majesty's dominions, while special provisions are made as to persons in the service of the Government.

(*g*) See *supra*, p. 444.

(*s*) Consolidated in No. 6 of 1905, *infra*, p. 464.

(*u*) See *infra*, p. 462.

(*r*) *Ibid*.

(*t*) See *supra*, p. 444.

(*x*) See *supra*, p. 433.

**Juvenile Offenders.**—No. 45 renders it lawful for the Lieutenant-Governor by warrant to remove juvenile male offenders, who are sentenced by a competent Court to imprisonment or to detention in a reformatory, to the Cape Colony, in order to be placed in a reformatory there until the expiration of their sentences.

If it be for the benefit of any such offender, he may be apprenticed in the Transvaal to any useful calling or occupation, a contract for that purpose to be drawn by a resident magistrate at the direction of the Attorney-General, either for the time of his sentence or, with the consent of any parent or guardian, until he comes of age.

Special provisions are made for such contracts of apprenticeship.

**Prevention of Immorality.**—No. 46 repeals Law No. 11 of 1899 and makes new regulations and provisions for the prohibition of brothels and the prevention of prostitution, either by procuring women for immoral purposes, or by allowing houses to be used for immoral purposes, or by detaining women for similar purposes. Provisions are made to prevent immorality between white women and natives, the enticing to commit immoral acts, and the living of men on the earnings of prostitutes.

**Marks on Merchandise.**—No. 47 applies to the provisions of the Merchandise Marks Acts, 1887 (*y*) and 1891, (*z*) of the United Kingdom *mutatis mutandis* to the Transvaal.

**Crown Liabilities.**—No. 51 regulates the liability of the Crown for acts or omissions committed by its servants. Actions shall be laid against the Attorney-General, and the Colonial Treasurer shall pay the sum awarded.

**Incorporation of Societies.**—No. 56 provides for the proper registration of societies and associations formed in the Transvaal for any lawful object and which have been approved by the Lieutenant-Governor. Every such society shall be entitled to hold property and borrow money upon mortgage or debentures, or make bylaws, to have its committee or council of officers, and to sue and be sued in its corporate name.

**1904** (*a*)                      Ordinances—Public, 50; Private, 5.

**Attorneys to the Supreme Court.**—No. 1 re-enacts the provisions of the law in force in the late South African Republic for the admission of certain persons who served as clerks to the State Attorney, to any of the judges, or in some other similar capacities as attorneys of the Supreme Court.

**Administration of Justice.**—No. 12 amends the Magistrates' Court

(*y*) 50 & 51 Vict. c. 28.

(*z*) 54 & 55 Vict. c. 15.

(*a*) Contributed by W. R. Bisschop, Esq., LL.D.

Proclamation No. 21 of 1902, (*b*) in regard, *inter alia*, to the provisions regulating the power of magistrates to grant orders for arrests and interdicts, the authority of the Supreme Court to review sentences, and by creating and regulating the magistrates' power to issue.

No. 13 confers upon the Supreme Court of the Transvaal jurisdiction to hear Appeals from the Courts of Swaziland and authorises judges of the Supreme Court to act as judges of Swaziland Circuit Court.

No. 19 consolidates the law as to the appointment and jurisdiction of resident justices of the peace and justices of the peace, leaving the appointment in the hands of the Lieutenant-Governor, who defines the area of their jurisdiction and fixes the places where the Courts shall be held. The jurisdiction of the resident justice of the peace is restricted to contraventions under certain Acts which are set out in a schedule to the Ordinance, and the procedure in his Courts shall be the same as that in the Courts of the resident magistrates. He shall be *ex officio* justice of the peace and marriage officer for natives. Justices of the peace shall administer oaths and further exercise all powers which any law may confer upon them.

No. 22 repeals the Supreme Court Appellate Jurisdiction Extension Ordinance Transvaal No. 12 of 1902, (*c*) and enacts that the Supreme Court of the Transvaal shall no longer act as Supreme Court for the Orange River Colony.

No. 31 amends the Administration of Justice Proclamation Transvaal No. 14 of 1902, (*d*) and institutes Divisional Courts. These Courts shall consist of one Supreme Court judge, who will try the case if submitted to him. Appeal from these Courts shall lie to the Supreme Court. The Ordinance also makes the Witwatersrand High Court procedure applicable to appeals to the Supreme Court against the decision of one judge sitting in vacation. It further alters the period of articles for persons who are articulated or admitted as attorneys in other British Colonies, and gives power to the judge to make rules as to the authentication of documents executed outside the Colony for use within the Colony.

**Criminal Law: Theft of Stock and Produce.**—No. 6 consolidates (*e*) and amends the law relating to the theft of stock and produce, and specially regulates the owner's claim for return of stock or damages brought against the accused person at his trial. Further, the Act fixes a penalty for the unauthorised entry of a farm, and regulates the apprehension without a warrant of suspected persons and the searching of persons and houses. It forbids purchasers and sellers of stock and produce to do business between sunset and sunrise, and renders it

(*b*) See *supra*, p. 435.

(*c*) *Ibid*.

(*d*) See *supra*, p. 434.

(*e*) It repeals Law No. 4 of 1891 and Law No. 2 of 1894.



compulsory for certain purchasers to obtain certificates of purchase. Rules are made for the purchase of stock from coloured or unknown persons and for the preservation of hides.

No. 26 defines the criminal offences coming under the description of housebreaking and such like offences, extortion, counterfeiting coin, and buying, selling and dealing in, uttering, tendering, and possessing counterfeit coin, clipping, sweating, or defacing coin, the imputation and pretension of making use of witchcraft, assaulting, resisting, or obstructing a police officer in the execution of his duty, and the attempting to commit any statutory offence. It provides punishments for the commission of these offences and gives the magistrates power to impose a punishment of whipping.

**Law of Evidence.**—No. 21 makes it competent and even compulsory for the wife or husband of an accused person to give evidence for the prosecution in cases of bigamy.

**Imprisonment.**—No. 36 provides for the imprisonment within the Transvaal of criminals sentenced in adjacent territories until the expiration of their sentence, and for their removal to another Colony or territory for imprisonment or detention. (*f*)

**Gaols.**—No. 2 amends the Gaol Law of 1880 (No. 14), by defining the word “gaol” as well as the jurisdiction of the officer in charge of places used as gaols and his power to make regulations.

No. 20 (*g*) consolidates and amends the law regarding the trial of certain offences committed in gaols. It sets out the jurisdiction of the officers in charge of the prisons at Johannesburg and Pretoria, of convict stations, and the jurisdiction of resident magistrates as to prison offences. All sentences shall be subject to review by the Supreme Court. All offences other than prison offences which are committed in prison shall be tried in the Courts of the resident magistrates.

**Arbitration.**—No. 24 provides for the settlement of differences by arbitration, and applies with certain modifications the provisions of the English Arbitration Act, 1889, (*h*) to the Transvaal. The principal additions regard the matters excluded from arbitration, the disinterestedness of umpires, and the compulsory attendance of witnesses.

**Census.**—No. 9 provides for the taking of a census from time to time which may be ordered by the Lieutenant-Governor by a Proclamation, published in the *Gazette*. (*i*) The census is to be held by census officers under the superintendence of a Commissioner of the Census, and these officers shall have access to any land, house, or enclosure and be entitled

(*f*) Cf. Southern Rhodesia Ordinance.

(*g*) Repealed by No. 6 of 1906, *infra*, p. 466.

(*h*) 52 & 53 Vict. c. 40.

(*i*) The first census under this Ordinance was taken on April 17, 1904, in accordance with Proclamation No. 19 (*Gazette*, March 25, 1904).

to ask all such questions of all persons as they may be directed by the Lieutenant-Governor to ask. Moreover, schedules shall be left at the houses to be filled in and returned to the enumerator or supervisor appointed for the area. Abstracts of these shall be made and returned to the Lieutenant-Governor and be published.

**Naturalisation.**—No. 10 amends the Naturalisation of Aliens Ordinance No. 46 of 1902, <sup>(k)</sup> creating facilities for the naturalisation of persons who have resided in the United Kingdom or its Colonies, and recognising certificates of naturalisation under the Imperial Naturalisation Act, 1870. <sup>(l)</sup>

**Unskilled Non-European Labourers.**—No. 17 <sup>(m)</sup> regulates the introduction into the Transvaal of unskilled non-European labourers.

Powers are given to the Lieutenant-Governor to appoint a Superintendent and inspectors of labourers, while the general powers of the authorities are described in the Ordinance itself.

In order to be entitled to introduce labourers into the Colony it is necessary for the importer to have a licence from the Lieutenant-Governor, and the conditions are set out which have to be complied with before such licences can be granted. No labourer shall enter the Colony unless previously having entered into a contract of service, and until such contract has been registered at the office of the Superintendent. The conditions for the execution of such contracts are set out as well as the conditions to which the introduction of labourers shall be subject—viz. constant employment in the service of a person holding a licence, compulsory return to his country of origin after the contract has come to an end, and the application of certain provisions of this Ordinance. Contracts to be for no longer period than three years, but to be renewable for a second period of three years, and to be transferable to other persons holding licences. Provisions are made for the control of the labourers so introduced, *e.g.* as to the supervision by the Superintendent regarding their removal, the returns to be made by their employers at the office of the Superintendent, the prohibition of their acquiring landed property, the obligation of their holding passports and residing on the premises where they are employed, the necessity of their being registered and provided with permits in case of absence from the premises on which they are employed.

Special regulations are made for the return of the labourers to their country of origin, while the Lieutenant-Governor is entitled to make regulations for the due observance of these provisions. Penalties are imposed for the breach of these regulations, and for the committing of such offences as are created by the Ordinance itself.

<sup>(k)</sup> See *supra*, p. 443.

<sup>(l)</sup> 33 & 34 Vict. c. 14.

<sup>(m)</sup> See *infra*, pp. 465, 467, 471.

Labourers shall not be allowed to bring their wives and families with them, and the Ordinance shall not apply to the introduction into the Colony of British Indians to be employed in the construction of railways.

The provisions of the Master and Servants Law, No. 13 of 1880, and of Law No. 3 of 1885, or any amendments thereof, and of ss. 2 to 8 of the Peace Preservation Ordinance Transvaal No. 5 of 1903, shall not apply to any labourer introduced under this Ordinance or to any contracts made thereunder.

**Trade Marks.**—No. 3 amends s. 7 of the Trade Marks Registration Proclamations Nos. 22 and 29 of 1902, <sup>(n)</sup> by extending the authority of the Registrar in cases of opposition to condemn in costs and to demand security for costs from persons residing outside the Colony.

**Companies.**—No. 30 amends Law No. 5 of 1874, and provides for the alteration of the objects for which the company was originally formed for the consolidation, sub-division, and conversion of its registered capital, and for the reduction thereof. In a fourth sub-division the Act gives the definition of special resolutions and provides for their registration.

**Accountants.**—No. III. of the Private Ordinances provides for the registration of accountants in the Transvaal. It restricts the use of the title of “public accountant” to those who are registered as public accountants under the Ordinance, and incorporated into one body corporate by the name of the Transvaal Society of Accountants. It provides rules for enabling a person entitled to be registered as a member of the society, including among them the members of any of the societies of accountants in England and Wales, Scotland and Ireland, whose membership is declared to be sufficient by the bylaws of the society for the time being in force for admission into the society. It sets out the offences for which members can be suspended from their membership, and the procedure to be followed in order to obtain such suspension. It further defines the powers of the Council, the purposes for which bylaws may be made, and the manner in which these may be altered.

**Great Stock.**—No. 15 provides for the branding of great stock and for the registration of such brands to commence on and from July 1, 1904.

**Fish.**—No. 46 <sup>(o)</sup> repeals Law No. 5 of 1880, and makes new provisions for the protection of fish in the Transvaal by regulating the close season and the obtaining of licences for fishing.

**Medicine, Dentistry, and Pharmacy.**—No. 29, <sup>(p)</sup> whilst repealing

<sup>(n)</sup> See *supra*, p. 433.

<sup>(o)</sup> Repealed by No. 5 of 1906, *infra*, p. 463.

<sup>(p)</sup> See *infra*, p. 464.



Law No. 12 of 1886 and Proclamation No. 1 of 1902(*q*) and two First Volksraad Resolutions, makes provision for the registration of medical practitioners, dentists, chemists and druggists, midwives and nurses, and for the better regulation of medical practice and the sale and dispensing of drugs, medicines, and poisons.

**Infectious Diseases: Leprosy.**—No. 23(*r*) repeals Law No. 15 of 1897, and amends the law regarding the isolation and detention of persons affected with leprosy. It maintains the bylaws and regulations made under the repealed law.

**Rabies.**—No. 27 provides powers for the Lieutenant-Governor to make regulations for the prevention of the introduction of rabies into the Transvaal and its spreading within the Colony.

**Diseases among Cattle.**—No. 38(*s*) makes further provisions for the prevention of the spread of the disease among cattle known as East Coast fever.

**Diseases among Plants.**—No. 16 provides measures for the prevention of the introduction and spread of the pests and other diseases amongst plants.

**Land Survey.**—No. 8 provides for the appointment of a Board to discharge the duties of a board of examiners under the Land Surveyors Ordinance Transvaal No. 55 of 1903.(*t*)

No. II. of the Private Ordinances provides for the incorporation of the Institute of Land Surveyors, which will enrol among its members all land surveyors admitted in the Transvaal and will exercise control over them.

**Fences.**—No. 7 regulates the erection and maintenance of dividing fences, dividing the Colony into areas of proclaimed property and unproclaimed ground, and creating offences of leaving gates open, doing injury to or damaging any fencing.

**Prospecting.**—No. 11 regulates the registration of prospecting contracts.

**Town Lands.**—No. 14(*u*) regulates the ownership of town lands, repealing Law No. 17 of 1898, Volksraad Resolution dated October 13, 1868, and certain sections of the regulations for towns in the late Republic published in the *Staats Courant* of October 25, 1899.

**Burger-rights.**—No. 18 regulates the taking up of title deeds for land which was sold or granted by the Government of the late South African Republic as burger-rights or in compensation for burger-rights, and limits the period within which such title deeds should be taken up to such times as the Lieutenant-Governor shall fix by

(*q*) See *supra*, p. 432.

(*s*) See *infra*, p. 481.

(*r*) See *infra*, p. 481.

(*t*) See *supra*, p. 446.

(*u*) See *infra*, p. 463.

Proclamation. (x) The Ordinance does not apply to land granted by the Government of the late Republic under Law No. 8 of 1886.

**Occupation Farms.**—No. 25 (y) provides for the occupation of farm lots and *erven* which were allotted by the late South African Republic in pursuance of Volksraad Resolutions dated July 31, 1883, Art. 982; May 12, 1888, Art. 71; June 9, 1888, Art. 425; and Executive Council Resolution of January 3, 1899, Art. 1, but were never taken up in the district of Zoutpansberg, Waterburg, and Middelburg.

**Public Roads.**—No. 44 (z) regulates the establishment of public roads within the districts of local authorities upon the petition of these authorities. The roads so established to vest in the local authorities. It gives provisions for compensation by arbitration to persons damaged by the proclamation and the establishment of public roads, and makes rules for the diversion and closing of roads for mining purposes (either permanently or temporarily) in case mining operations are carried on which may be dangerous to any such public roads. Special provisions are contained in the Ordinance regarding the Main Reef or Witwatersrand Road.

**Municipal Corporations.**—No. 41 (a) amends the Municipal Corporation Ordinance No. 58 of 1903 (b) and contains special provisions for the constitution of municipality boards and the election of their members.

No. 49 (c) amends the Municipality Election Ordinance No. 38 of 1903 (d) regarding the election of councillors.

**Rand Water Board.**—No. 48 extends the powers of the Rand Water Board as instituted under the Rand Water Board Incorporated Ordinance No. 32 of 1903, (e) and provides for the transfer to the Board of the undertakings of the Braamfontein Company, Limited, the Johannesburg Waterworks, Estate, and Exploration Company, Limited, and the Vierfontein Syndicate, Limited. In its financial provisions it empowers the Board to raise money by the issue of stock and other paper of credit, and fully regulates their issue and redemption.

**Stamp Duties.**—No. 40 further amends the Stamp Duties Amendment Proclamations Nos. 12 and 26 of 1902, (f) and provides rules for the affixing and defacing of stamps. It also amends the scale of charges.

**Currency.**—No. 42 declares the law relating to the currency of the Transvaal, and applies the rules regarding the use of British coins

(x) This was done by Proclamation No. 45 of 1904 (*Gazette* of August 19, 1904, p. 383), which fixed December 31, 1904, as such date. On p. 384 of the same *Gazette* the forms of applications for title-deeds are set out.

(y) See *infra*, p. 463.

(z) See *infra*, p. 468.

(a) See *infra*, p. 469.

(b) See *supra*, p. 448.

(c) See *infra*, p. 469.

(d) See *supra*, p. 449.

(e) See *supra*, p. 455.

(f) See *supra*, p. 433.

within the United Kingdom to the use of both British and Transvaal coins within the Transvaal.

**Military.**—No. 37 repeals the Volunteer Corps Ordinances (Transvaal) Nos. 5 and 38 of 1902, (*g*) and makes provisions for the formation, discipline, and maintenance of Volunteer corps.

**1905 (*h*)** Ordinances passed—Public, 36; Private, 2.

**Administration of Justice, Circuit Courts.**—No. 1 further regulates the procedure before Circuit Courts in criminal cases, as regards compelling the attendance of witnesses and the practising of advocates and attorneys.

**Town Lands.**—No. 2 amends the Town Lands Ordinance No. 14 of 1904, (*i*) and makes special provisions relative to the exchange of certain portions of town lands of Middelburg and Potchefstroom.

**Proclaimed Lands.**—No. 7 regulates brickmaking, lime-burning, and quarrying on land held under claim licences, provided that every holder of such claim or any third person with his consent shall require a permit for digging stone and burning bricks and lime, and that he shall require the consent of the owners of the land to obtain such permit. Only one such permit shall be granted for any one claim and the owner shall be entitled to a half-share of the fees. On certain grounds—which are set out—the grants may be refused.

**Occupation Farms.**—No. 13 amends the Occupation Farm Ordinance No. 25 of 1904, (*k*) as far as regards the power to issue freehold title in exchange for occupation title and the forfeiture of rights granted under Law No. 8 of 1886.

**Townships.**—No. 19 regulates the laying out of townships on private land. A Special Board, called the Townships Board, shall be constituted to inquire into and report upon all applications made to the Colonial Secretary for permission to lay out a township upon a farm. It regulates the procedure for such application and the consideration thereof and the transfer and vesting of lands reserved for public purposes as well as the abandonment of townships.

**Crown Lands.**—No. 34 transfers certain Crown Lands to the Municipality of Pretoria for certain military purposes and on the conditions set out in the Ordinance.

**Explosives.**—No. 4 consolidates (*l*) and amends the law relating to the manufacture, storage, sale, importation and exportation of

(*g*) See *supra*, p. 439.

(*h*) Contributed by W. R. Bisschop, Esq., LL.D.

(*i*) See *supra*, p. 461.

(*k*) See *supra*, p. 462.

(*l*) It repeals the whole of Law No. 10 of 1893 and No. 27 of 1897, the Ordinance No. 4 of 1903, see *supra*, p. 444.



explosives. Licence is necessary for the manufacture and storage and dealing in explosives, while permits are necessary for the importation, exportation, and use of these articles. It provides the procedure for obtaining a licence for their amendment, transfer, and revocation. Powers of the inspectors are set out. The trial of these offences falls under the special jurisdiction of the resident magistrate.

**Insolvency.**—No. 5 repeals Article 149 of the (Insolvency) Law No. 15 of 1895, grants power to the Governor to appoint an Insolvency Commissioner, and substitutes a new tariff of fees chargeable by the Master in Insolvency and Liquidation matters, whilst regulating Law No. 5 of 1881.

**Preservation of Game.**—No. 6 (*m*) repeals the Game Preservation Ordinance No. 29 of 1902, (*n*) and the Amendment Ordinance No. 30 of 1903, (*o*) and consolidates and amends the law relating to the preservation of game.

**Transfer Duty.**—No. 14 amends the Transfer Duty Proclamations No. 8 and 27 of 1902 (*p*) by substituting new provisions as to persons chargeable with transfer duty, as to the ascertainment of the value of fixed property, and as to others by providing the exemption from transfer duty in certain cases, and by granting powers to the Lieutenant-Governor to make certain regulations.

**Administration of Estates.**—No. 15 amends the Administration of Estates Proclamation No. 28 of 1902, (*q*) by providing a summary procedure for the appointment of an executor to estates of persons not resident in this Colony whose estates consist only of shares in any company, and for the dispensing of such procedure in the case of estates under £100, and the simplifying thereof in the case of estates under £200. It further contains provisions for the preservation of the interests of minors, the investing of moneys of minors paid into the guardian fund, and the payment into that fund of moneys remaining unclaimed in banks and other companies.

**Medicine, Dentistry, and Pharmacy.**—No. 17 amends the Medical Dental and Pharmacy Ordinance No. 29 of 1904 (*r*) as to the provisions therein contained regarding the sale of poisons.

**Selati Railway.**—No. 21 makes provisions for applying any moneys accruing to the Crown in respect of its share of the net proceeds of any mine worked under the Precious Stones Ordinance No. 66 of 1903, (*s*) to the redemption of the debentures of the Franco-Belgian Northern Railway Company which were guaranteed to the holders by the Government of the late South African Republic.

(*m*) See *infra*, p. 481.

(*p*) See *supra*, p. 432.

(*n*) See *supra*, p. 444.

(*q*) See *supra*, p. 438.

(*s*) See *supra*, p. 453.

(*o*) See *supra*, p. 455.

(*r*) See *supra*, p. 460.

**War Stores.**—No. 22 sets out the powers of the Commissioners appointed by His Majesty to hold an investigation in the Transvaal respecting war stores in South Africa, and makes provisions to facilitate their proceedings in that Colony.

**Licences.**—No. 23 repeals Ordinance No. 50 of 1902 and four other laws, and provides rules for the granting of licences to carry on certain trades as set out in the second Schedule to the Ordinance, thereby amending the law relating to revenue licences.

No. 35 regulates the trading upon ground held under mining title in the mining districts of Johannesburg, Boksburg, and Krugersdorp. In order to exercise the right of trading in those districts, licences shall not be issued under the above Ordinance, but special licences shall be required, to be issued by a special board which shall be specially nominated for the granting of such certificates. The powers of such board are fully set out as well as the mode of procedure to obtain such certificates.

**Unskilled non-European Labourers.**—No. 27 (*t*) amends the Labour Importation Ordinance No. 17 of 1904 (*u*) and confers jurisdiction on the superintendent and inspectors of labourers appointed under the 1904 Ordinance to try and punish certain offences. It provides the procedure of such trials and enacts that the decisions are subject to review by and appeal to the Supreme Court.

Every employer of labour in mines shall provide a lock-up on the mines. The superintendent shall have the right to impose a collective fine on all labourers in a gang, and he shall have the power to return dangerous labourers to their country of origin. In amending s. 31 of the 1904 Ordinance fresh provisions are made penalising the possession by the sale of opium to labourers.

Labourers found outside Witwatersrand district may be arrested by any private person.

**Mining.**—No. 31 amends the Mines Works and Machinery Regulations Ordinance (Transvaal) No. 54 of 1903 (*x*) by substituting a new interpretation clause, granting additional powers as to making regulations, substituting new provisions regarding work on Sundays, regarding the construction of railway sidings, tramways and other works, regarding penalties not expressly provided for, regarding the powers of Inspectors of Mines and Chief Inspectors of Machinery to try breaches of certain regulations, and regarding the employment of native labourers below a certain age.

No. 32 makes provisions relating to the health of coloured labourers on mines and works in the labour districts and for securing uniformity in carrying out such provisions.

(*t*) See *infra*, p. 467.

(*u*) See *supra*, p. 459.

(*x*) See *supra*, p. 452.

The Lieutenant-Governor shall have power to make regulations relative to the medical inspection, the housing and food of coloured labourers, and these regulations shall have the effect of suspending municipal bylaws on the same subject-matter. The Ordinance shall, however, not apply to the Labour Importation Ordinance, 1904. (*y*)

**Marriages.**—No. 33 legalises certain marriages between persons set out in the two Schedules to this Act which were not solemnised in accordance with the provisions of Law No. 3 of 1871 regarding the marriages between white persons, or with the provisions of Law No. 3 of 1897 regarding marriages between coloured persons.

**Opium.**—No. 36 (*z*) regulates the importation of opium. It is prohibited under penalties of fines and imprisonment to import opium except under permit, and the possession of opium without such permit, except for medicinal purposes, shall be a criminal offence. Powers are granted to police constables having a written authority from a magistrate or justice of the peace to enter premises on which there is reasonable suspicion that opium is kept.

**1906** (*a*)                      Ordinances passed—31; Private, 2.

**Foreign Enlistment.**—No. 1 applies the Foreign Enlistment Act, 1870, (*b*) to the Transvaal.

**Administration of Justice.**—No. 2 provides for the obtaining of evidence of persons residing in the Transvaal by Courts of Law in neighbouring Colonies and Territories. (*c*) Part I. regards the serving of subpoenas on witnesses residing in the Transvaal for their attendance in the Courts of Law of neighbouring States. (*d*)

Part II. regards the examination by interrogatories of persons residing in the Transvaal whose evidence is required in civil cases in Magistrates' Courts in neighbouring Colonies. (*e*)

**Gaols.**—No. 6 repeals Ordinance No. 20 of 1904, (*f*) and partially a number of other Laws. It consolidates and amends afresh the Law

(*y*) See *supra*, p. 459.

(*z*) Repealed by No. 25 of 1906, *infra*, p. 467.

(*a*) Contributed by W. R. Bisschop, Esq., LL.D.

(*b*) 33 & 34 Vict. c. 90.

(*c*) See Ordinance No. 15 of 1905 O.R.C., *supra*, p. 393.

(*d*) This part was declared to take effect with regard to Cape Colony, Orange River Colony, and Bechuanaland Protectorate by Proclamation No. 57 of 1906, *Gazette*, July 6, 1906; with regard to Basutoland by Proclamation No. 85 of 1906, *Gazette*, September 28, 1906; and with regard to Natal by Proclamation No. 102 of 1906, *Gazette*, November 8, 1906.

(*e*) This part was declared to take effect with regard to Cape Colony, Natal, Orange River Colony, Southern Rhodesia, and Bechuanaland Protectorate by Proclamation No. 70 of 1906, *Gazette* of August 31, 1906.

(*f*) See *supra*, p. 458.



relating to convict prisons and gaols and provides for the establishment of reformatories for the reception and custody of juvenile offenders.

**Export Duty.**—No. 3 imposes a duty on the export of Angora rams and ewes from the Transvaal. (*g*)

**Customs.**—No. 4 amends the customs laws and customs tariff in certain respects, allowing a rebate of portion of the duties on articles imported which are the growth, produce, or manufacture of the United Kingdom or of other British Colonies which grant reciprocal treatment.

Special provisions are inserted to allow the distillation of spirit from the produce of the vine, and the Lieutenant-Governor obtains authority to suspend certain duties and to make regulations on certain points. The Customs Union Tariff is added in a schedule to the Ordinance.

**Opium.**—No. 25 repeals the Opium Importation Ordinance No. 36 of 1905, (*h*) and sub-sections 15 and 16 of s. 31 of the Labour Importation Ordinance No. 17 of 1904, (*i*) as amended by s. 8 of the Labour Importation Ordinance No. 27 of 1905, (*k*) and regulates afresh the importation of opium into the Transvaal.

The importation of opium is prohibited under penalties of fine and imprisonment to any one but chemists and druggists who have obtained a permit. Persons lawfully entitled to sell opium shall make returns of the quantity in stock at the date when the Ordinance comes into operation. Conditions are provided for the purchase of opium from importers by medical practitioners and chemists, and all those importers, purchasers and sellers shall keep books containing records of the quantities of opium, the date of its importation, the person from whom, and the place from which, it is imported, and the quantity disposed of. These books shall be open for the inspection of the Secretary of the Pharmacy Board, or of any police officer of or above the rank of inspector.

Special provisions are made that no opium shall be sold except on the production of a permit, while powers are given to the police for the entrance and search of premises where it is reasonably suspected that opium is kept in contravention of the Ordinance. Provisions are set out for the evidence which it will be necessary to produce and the procedure to be followed.

**Infectious and Contagious Diseases.**—No. 9 establishes a provisional Joint Committee for the Witwatersrand district for the purpose of establishing and managing hospitals for dealing with infectious and contagious diseases and for improving and maintaining the main reef

(*g*) Proclamation No. 104 of 1906, *Gazette* of November 16, 1906, exempts from duty the Angora rams and ewes which are exported to the Cape Colony, because the Cape Colony has itself provided for the imposition of such duty on sheep exported from that Colony.

(*h*) See *supra*, p. 466.

(*i*) See *supra*, p. 459.

(*k*) See *supra*, p. 465.

road. The Committee absorbs the Johannesburg Hospital Committee, which was appointed under s. 4 of the Epidemic Diseases and Hospitals Committees Ordinance, 1905, and the Rand Plague Committee constituted by Government Notice No. 420 of 1904, and takes over all their rights and liabilities. The Committee shall have authority to establish dispensaries for the use of the poorer inhabitants, to make provisions for the nursing of sick persons in their own homes, to provide mortuaries, disinfecting stations, ambulances; to regulate the admission to hospitals, the charges for treatment there, the establishment of free wards; to make regulations regarding infectious diseases, and in general to have all the powers required for carrying out these duties. For that purpose the Committee may enter into contracts and take legal proceedings.

Special powers are given to the Committee for making provisions as to the repairing, constructing, and altering of the main reef road mentioned in the Local Authorities Roads Ordinance No. 44 of 1904. (*l*)

In the second schedule a sum of £73,000 is set apart for the construction of hospitals and the acquisition of sites therefor.

**Fish.**—No. 5 repeals the Fish Preservation Ordinance No. 15 of 1904, (*m*) and makes new provisions for the protection of fish in the Transvaal.

**Natives.**—No. 20 amends the law relating to the taxation of natives as laid down in the Native Taxation Ordinance No. 20 of 1902, (*n*) by reducing the consolidated tax of £2 in the case of either farm labourer or municipal location resident to £1, and some further amendments.

**Asiatics.**—No. 29 (*n*<sup>1</sup>) repeals Act No. 3 of 1885 as afterwards amended, and provides new regulations for the residence of Asiatics in the Transvaal. All such Asiatics, lawfully resident in the Transvaal, shall be registered, and must apply for such registration before January 1, 1907. The Registrar shall have to register all applications for registration if approved of, and, in case of refusal, give notice thereof. Guardians are obliged to give particulars and to apply for registration of their wards; and, if they fail to supply such particulars, the wards themselves shall, on attaining the age of sixteen years, have to apply for registration. Evidence of registration shall be supplied by a certificate issued by the Registrar, and this certificate shall have to be produced on demand by the bearer thereof. Trading licences shall not be granted to Asiatics except on the production of these certificates. Further provisions are made with regard to lost or destroyed certificates, to the exemption from stamp duty of affidavits or sworn declarations which may be required by Regulation; and also with regard to the offences relating to applications for registration and to registration certificates. Also provisions are made for Asiatics under contract for service and regarding the

(*l*) See *supra*, p. 462.

(*m*) See *supra*, p. 460.

(*n*) See *supra*, p. 438.

(*n*<sup>1</sup>) See *infra*, p. 474.

capacity of Asiatics to hold fixed property. Powers are given to the Lieutenant-Governor from time to time to alter or repeal special regulations for the purposes set out in the Ordinance. (o)

**Registration.**—No. 19 provides for the proper registration of births and deaths within the Transvaal, and establishes a central registration office for births, marriages, and deaths, at the same time repealing Proclamation No. 17 of 1900.

A Registrar-General, District Registrars, and Assistant District Registrars of Births and Deaths shall be appointed by the Lieutenant-Governor, who, at the same time, will make regulations for the purposes of this Ordinance. These officers shall have to keep registration books and inform themselves of births and deaths occurring in their districts. Registration must take place within two years of the birth or death of a person, and provisions are made for the registration of children to whom no name is given, or whose name is altered, of illegitimate children, of bodies of new-born children found exposed; as well as provisions for the information to be forwarded by persons holding inquests, of custodians of burial places, and of undertakers.

The second part of the Ordinance applies to registration within areas which are defined as urban areas. The duties are set out of different persons who have to notify the birth or the death of a person, and of those to whom the burial of deceased persons is entrusted.

Part III. regards the districts and areas other than the urban areas.

Part IV. contains miscellaneous provisions regarding the power of the Lieutenant-Governor to prescribe special provisions as to the births and deaths of natives; penalties for losing or injuring registers; provisions for the removal of bodies or remains of bodies which have been buried, and for the burial of persons within the Transvaal who have died outside the Transvaal.

**Municipal Councils.**—No. 24 further amends the Municipal Elections Ordinance No. 38 of 1903, (p) by rendering it unnecessary for the council to make voters' roll oftener than triennially, and giving them power to add to voters' roll on application.

**Municipal Corporations.**—No. 26 further amends the law relating to municipal corporations, by substituting several new clauses in the Municipal Corporations Ordinance No. 58 of 1903, (q) and No. 41 of 1904, (r) and specially provides for the contravention of the bylaws or regulations by a company, firm, or partnership; for the validation of agreements entered into by the Council of the Germiston and Boksburg Municipalities relative to bonds, native elections, and Asiatic bazaars;

(o) This Ordinance did not take effect until 1907, as it had been postponed until it was notified that his Majesty had been pleased not to disallow the same.

(p) See *supra*, p. 448.

(q) Ibid.

(r) See *supra*, p. 462.



for the issue of long leases by the council for Asiatic bazaars and native locations, and for the conduct of councillors who are either acting for the council in professional capacity or are interested in contracts with the council.

In the schedules to this Ordinance the agreements are set out which are sanctioned by it.

**Civil Service.**—No. 30 regulates the retiring pensions of those officers of the public service of the Transvaal who have been transferred thereto from other services with pensionable rights.

Pensions may be paid on superannuation of such officers, on their invalidation, and for extraordinary causes. The age for retirement is fixed at fifty-five years, and special conditions are set out for the grant of invalid and extraordinary pensions. The Lieutenant-Governor has powers to compel a pensionable officer to retire on incapacity. The payment of pensions to the widows or minor children of pensionable officers is left to the discretion of the Lieutenant-Governor, while persons dismissed or voluntarily retiring from the service before the prescribed age are not entitled to pensions. Pensions shall be paid out of the Colony's revenue.

The second part of the Ordinance deals with the suspension and reduction of pensions, the recall of pensioned officers to service, the commutation of small pensions, the impossibility of assigning pensions or of seizing them on behalf of creditors. The pension ceases on conviction and on insolvency.

## 1907 (s)      Letters Patent and Acts 1-37 of 1907.

**Constitution.**—Letters Patent.—The Statute Book of 1907 commences with the letters patent which were granted to the Transvaal on December 6, 1906, and provide for the constitution of responsible government for the Transvaal. The Legislature shall consist of a Legislative Council (to consist of fifteen members, and to be nominated for the first time by the Governor for four years, and after four years from the date of its first meeting to be elected by the qualified voters, if so provided by law passed by the Legislature) and a Legislative Assembly (to consist of sixty-nine members and to be elected by the qualified voters in the electoral districts set out in the Transvaal Government Notice, No. 7018, of 1906).

Voters for the Legislative Assembly to be all male British subjects of twenty-one years who have the proper qualifications as to residence, good behaviour, and self-support. Qualification as a voter carries with it qualification as a member of the Legislative Assembly, provided that

persons who hold any office of profit under the Crown shall not be entitled to be elected as a member, nor as a revising officer.

The elected Legislative Council and the Legislative Assembly to be dissolved five years after the date of their election, and one session to be held in each year.

Members of both Houses shall be disqualified, *inter alia*, if they accept any office of profit under the Crown. The Constitution itself excludes ministers, army and naval officers, and all persons who receive pensions from the Crown, from the definition of "persons who hold offices of profit under the Crown," while Act No. 1 of 1907 makes further provisions regarding this subject.

The language in debate shall be English and Dutch, and copies of the votes and proceedings of both Houses shall be printed in both languages, as well as the copies of all proposed laws. On the other hand, the language in all records shall be English.

The members shall receive a remuneration. Originally the Constitution fixed the remuneration at £150 plus £2 for every day of the session, with a limit of a total remuneration of £300, but by Act No. 12 of 1907 the rate of remuneration was altered.

Full legislative powers are granted to the Legislature, inclusive of the power to repeal or alter any of the provisions of the Letters Patent granting the Constitution, but any such bill must be reserved by the Governor for the signification of the King's pleasure. These Letters Patent further provide rules to be observed in case of disagreement between the two Houses, viz. dissolution of either or both Houses, and joint sittings under the chairmanship of the Speaker of the Legislative Assembly.

The Royal prerogative of vetoing bills passed by the two Houses may be exercised by the Governor according to his discretion. He may reserve Bills for the royal sanction to be given or withheld within two years, and is bound to reserve them in the case of laws providing for disabilities of natives, or repealing or altering provisions of the Letters Patent. Ministers and judges shall be appointed by the Governor, and the Inter-Colonial Council shall continue to exercise the powers given to it by the Order in Council instituting this body.

The Labour Importation Ordinance, No. 17 of 1904, (t) shall terminate one year after the date of the Letters Patent, and no more licences shall be issued for the introduction of labourers under that Ordinance.

The rest of the provisions concern native administration, the establishment of a Land Settlement Board, the Consolidated Revenue Fund, and the financial matters of the Transvaal (whereby it is provided that

(t) See *supra*, p. 459.

all appropriation Bills shall originate in the Legislative Assembly), the appointments to public offices, the pensions on retirement of certain official members of the Executive Council, and the interpretation of terms in the Letters Patent and other Acts of the Transvaal.

The schedules contain instructions to Commissioners for the division of the seats of the Legislative Assembly, the regulations as to the registration of voters, the preparation of the voters' lists and the conduct of elections, the regulations for the re-division of the Colony for electoral purposes, the charges on the Consolidated Revenue Fund, the pensions to retired officers, and the Letters Patent and Ordinances repealed.

*Governor's Letters Patent.*—These were passed on the same day, December 6, 1906, and describe the powers of the Governor of the Transvaal, while the *Royal Instructions* of the same date define the duties of the said Governor. These instructions set out the laws to which the Governor shall not give his consent without having previously obtained instructions to that effect from the Government in England, and also the regulation of the power of pardon in capital cases.

No. 1 of 1907 amends s. 30 of the Transvaal Constitution Letters Patent by defining the services which may be rendered to the Crown without being deemed the holding of offices of profit under the Crown. The offices set out in the schedule are: the membership of the Inter-Colonial Council, the Liquor Licensing Court, the Transvaal Land Settlement Board, the Volunteer Corps, and, generally speaking, any Commission appointed by the Governor to make any public inquiry.

*Parliamentary Privileges.*—No. 3 defines the privileges, immunities, and powers of the Legislative Council, and of the Legislative Assembly, and secures freedom of speech and debate and proceedings in Parliament, giving similar protection to persons employed in the publication of Parliamentary papers.

In all these the rules of the English Parliament are followed.

*Private Bills Legislation.*—No. 6 provides for the care, custody, and inspection of documents deposited with Parliament for the purpose of private Bills to be introduced therein; and further to provide for the taxation of costs incurred in the promotion of an opposition to such private Bills.

*Agent-General.*—No. 11 provides for the appointment of an Agent-General of the Transvaal to reside in the United Kingdom, the appointment to last during the pleasure of the Governor, or for a period not exceeding five years. The salary is fixed at £3000 per annum, and the appointment was to take effect on August 15, 1907.

*Remuneration of Members.*—No. 12 amends s. 35 of the Transvaal Constitution Letters Patent, by providing that the remuneration of any



members of either House for ordinary sessions shall be £300 per session, after the deduction of £2 for every day that he will be absent during the session.

*Auditor-General.*—No. 14 provides for the office and tenure of office and for the definition and powers of the Auditor-General; also for the regulation of the receipt, custody, and issue of public moneys, and provides for the audit of the accounts of the Colony.

No. 19 suspends temporarily and in certain cases a portion of subsection No. 2 of s. 50 of the Constitution, 1906, with regard to the return of Asiatic labourers to their country.

No. 24 fixes the salary of the President of the Legislative Council and of the Speaker of the Legislative Assembly.

*Field Cornets.*—No. 32 repeals Law No. 2 of 1885 and again provides for the appointment of Field Cornets and determines their powers, jurisdiction, and duties.

*Administration of Justice.—Criminal Appeal.*—No. 18 limits the right of appeal to the Supreme Court against the sentences of Courts of resident magistrates in cases where the appellants appear in person before the Supreme Court. The Act contains also provisions to amend the law with regard to juvenile offenders.

No person shall be entitled to appeal from a sentence of a Court of a resident magistrate unless he has first obtained a certificate of the judge that there are reasonable grounds for his so appealing.

With regard to juvenile offenders, it shall no longer be necessary for the Registrar of the Supreme Court to keep records of proceedings in the case of sentences of moderate correction with a cane or rod not exceeding fifteen cuts pronounced against a male child not exceeding the age of fourteen years.

*Trustees and Liquidators.*—No. 7 has two objects. The first is to recognise the appointment of trustees and liquidators appointed abroad of an insolvent property. If the insolvent possesses property within the Colony, the foreign trustee or liquidator may, on production of his letter of appointment and after specifying in writing a place in the Colony as his *domicilium citandi*, obtain from the Court recognition as trustee or liquidator over all properties which may belong to the insolvent and situated within the Colony.

In case this recognition is granted, the trustee or liquidator has to lodge an inventory of all such property as may be situated within the Colony, and further submit to all the rules fixed for the administration of insolvent properties in the Transvaal.

Special rules are set out for the lodging of accounts and for the distribution of assets, the payment of general creditors, the payment of unpaid dividends into the guardian's fund, payment of expenses of

liquidator, and staying of actions. In all matters where these special provisions do not apply, the Insolvency Laws of the Transvaal shall apply.

The second object of the Act is to provide reciprocity with other British possessions, by stipulating that this Act shall *ipso jure* come into force as regards any British possession from the date of the publication in the *Gazette* that in such possession due provision is made for the recognition of letters of appointment of trustees in insolvencies and liquidators by the competent authorities.

**Patents.**—No. 28 amends the Patent Proclamation, No. 22 of 1902, (*u*) by transferring to the Supreme Court certain jurisdiction possessed thereunder by the Commissioner of Patents.

**Workman's Compensation.**—No. 36 provides for and regulates the liability of employers to make compensation for personal injuries to workmen in their employ caused by an accident, and to punish certain offences in connection with such injuries. Notice of an accident should be given to the employer within fourteen days of the injury. Any dispute as to compensation to be paid by the employer should be referred to the resident magistrate for the district in which such injury was received. The compensation to be 50 per cent. of the wages which the workman was receiving at the time when the injury occurred.

Compensation shall be paid to the workman for permanent injury caused by an accident, or to the dependants of the workman for an injury causing the death of the workman, such compensation to consist of a lump sum equal to three years' wages at the rate of wages earned by the workman at the time of the injury.

The amount of contribution paid by the employer or principal to benefit societies, sick fund administrations, or clubs to which the workman belonged shall be deducted from the amount which the employer or the principal would have been adjudged liable to pay to the workman or his dependants under this Act.

Contracting out is prohibited.

The Act, which is modelled on the lines of the English Workmen's Compensation Act, 1906, (*x*) excludes from the definition "workman" all persons whose wages in respect of their work exceed £500 a year, all those who are casually employed, outworkers, and all contractors and sub-contractors who themselves engage other persons independently of their employers to perform such work.

**Asiatics.**—No. 2 (*y*) repeals Law No. 3 of 1885 and regulates afresh

(*u*) See *supra*, p. 433.

(*x*) 6 Edw. VII. c. 58, *supra*, vol. i. pp. 131-132.

(*y*) This Act was reserved for his Majesty's consent, which was notified in the *Gazette* of June 7, 1907, while the date of its taking effect was fixed at July 1, 1907. See also *supra*, p. 468.

the registration of all Asiatics lawfully resident in the Transvaal. Lawful residents are considered to be those who were resident and actually in the Colony on May 31, 1902, all children born in the Colony since that date not being the child of any labourer introduced in the Colony under the Labour Importation Ordinance, No. 17 of 1904, (z) and all those who were duly authorised to enter the Colony by a permit issued under the Indemnity and Peace Preservation Ordinance, No. 38 of 1902. (a)

Application for such registration had to be made by every Asiatic resident in the Colony at the date of the taking effect of the Act before a date which was afterwards fixed in the *Government Gazette* at November 30, 1907, and at such places as were afterwards fixed by notices in the *Gazette*.

Every Asiatic who shall enter the Colony after the date of the taking effect of the Act and who shall not previously have been registered under the Act has to make application for registration within eight days after entering the Colony.

The application has to be made to the Registrar, who shall consider every such application made to him. If not satisfied that the applicant is lawfully resident in the Colony, he shall report to the resident magistrate, and the resident magistrate shall summon the applicant to appear before him not less than fourteen days after notice has been given to him by the Registrar. If the applicant does not appear or does not satisfy the resident magistrate that he is lawfully resident in the country, the resident magistrate, if the applicant is sixteen years of age or more, shall make an order for the applicant to leave the country within such time as shall be fixed by the resident magistrate.

Special provisions are made for children under eight years of age and those between eight and sixteen years of age.

Penalties, consisting of fines not exceeding £100 and imprisonment not exceeding three months, are fixed for persons who fail to make application for registration, either on their own behalf or as guardians for children, or who bring into the Colony Asiatics under the age of sixteen years who are not lawfully resident within the Colony.

Every Asiatic found within the Colony after November 30, 1907, without being able to produce a certificate of registration may be arrested and brought before a resident magistrate, and if unable to satisfy the resident magistrate that he is a lawful holder of such a certificate, may be ordered to leave the country within such time as shall be fixed by the resident magistrate.

The same shall apply to an Asiatic who failed to make an application

(z) See *supra*, p. 459.

(a) See *supra*, pp. 442-443.



within the specified time and fails to show good and sufficient cause why he was unable to do so.

Trading licences shall not be issued to Asiatics who cannot produce a certificate of registration.

Permits may be issued by the Colonial Secretary at his discretion authorising Asiatics to enter the Colony and remain in it for a limited period to be mentioned in the permit.

Any fixed property acquired by an Asiatic before the taking effect of Law No. 3 of 1885 and registered in his name is declared transmissible by such Asiatic to another Asiatic by testamentary or other inheritance. The other provisions of the Act regard its proper working and administration.

**Immigration.**—No. 15 applies restrictions on immigration of aliens into the Transvaal and provides for the removal therefrom of prohibited and undesirable persons, and for the establishment of an immigration department. The Preservation Ordinance, No. 5 of 1903, is repealed.

Prohibited immigrants are, for the purposes of this Act, all persons who through deficient education are unable to write an application for admission, or would likely become a public charge if they were admitted, or a prostitute, or convicts, or liable to conviction in some other State, or lunatics, or lepers, or suffering from some infectious or contagious disease, or are considered undesirables owing to information officially received, or would be considered dangerous to the peace, order, and good conduct of the Colony if they entered therein. Excepted are members of the King's regular forces, the officers and crew of ships of any foreign state, consular officers, soldiers who have received a good discharge, the wife or minor child of a person who is not a prohibited immigrant, any European person who has been lawfully resident within the Colony, any Asiatic who is properly registered under the Asiatic Law of 1907 and who does not fall under any of the last five categories of prohibited immigrants, aborigines of Africa south of the equator who do not fall under the last five categories of prohibited immigrants, or any European agricultural or domestic servant, skilled artisan, mechanics, workmen, or miners who at the date of his entry into the Colony holds a certificate signed by the Agent-General of the Colony that he or she is engaged to serve immediately on arrival and is not a prostitute.

Any person acting in contravention to this Act can be arrested and removed from the Colony by warrant of the Colonial Secretary.

All hotel, boarding-house, and lodging-house keepers are ordered to keep books for the entry of names of all guests and the places from which they last came. The duties and functions of the officers of the

Immigration Department are set out in the Act, and provisions are made for the due carrying out thereof.

**Natives.**—No. 29 amends the law relating to administration of justice amongst natives and the jurisdiction of native commissioners and sub-commissioners by repealing certain articles in Acts and Ordinances relating to this subject and the whole of Ordinance No. 44 of 1902 (*b*).

**Education.**—No. 25 repeals Ordinance No. 7 of 1903 (*c*) and amends the law relating to public education.

The Council of Education is constituted, of whom the members shall consist of a Director of Education and four others who shall be appointed by the Governor for a period of four years. The functions of the Council will be to advise the Colonial Secretary as to the estimates of expenditure for educational purposes during each year, as to the fees payable in secondary, trade, or training schools and institutions, and regarding appeals from decisions of the Board on the subject of the instruction; the appointment and dismissal of teachers in schools under the school boards; the regulations to be made by the Colonial Secretary for the carrying out of the Act, and any other matters on which the Colonial Secretary might require the advice of the Council. The Council shall not exercise any authority over the Director or any other officer of the Education Department.

Primary schools shall be established in all localities where there is reasonable ground for believing that the number of children on the roll of such school shall be not less than twenty-five throughout the year; but in addition to this, financial aid may be given to farm schools where no such primary school is established. All instruction given in a primary school to be free of charge, and every white child between seven and fourteen years old to be obliged to attend the school regularly. It will be the duty of the school board to enforce the compulsory attendance of the children, and the parents who do not comply with these provisions shall be liable to fines under the Act.

Secondary schools and schools for higher education for white persons may be established by the Colonial Secretary in a similar way as trade and industrial schools, continuation classes, and teachers' training institutions. At the same time provisions are made for the establishment of schools, classes, and institutions for coloured children or persons.

The medium of instruction in the lower standards of any school to be the native language of the pupil (whether Dutch or any other language which is neither English nor Dutch). English to be the medium after the third standard, but the medium to be Dutch after the third standard in subjects not exceeding two in number in addition to

(*b*) See *supra*, p. 439.

(*c*) See *supra*, p. 446.

the instruction to be given in the Dutch language if found necessary by the Director to ensure the effective teaching of the Dutch language. Provisions are made in every public school for religious instruction.

Private schools will have to be registered and furnish returns of teachers and pupils to the Educational Department, while the Director and every inspector shall have the right to visit these schools.

Provisions are made for the local management of schools or school districts. Each district shall have a school board to consist of six, nine, or twelve members, who must be resident in the district, and not be convicts or of unsound mind, and who shall be elected by all residents who are voters for the Legislative Assembly of the Colony. The boards shall have and exercise general supervision over such schools, classes, and institutions as are established or maintained within the district, with the exception of such schools which are specially marked in the third schedule of the Act. Any member of such boards shall have the right to enter any of these educational institutions within his district, and it is the duty of the Director to transmit to the board reports of the inspectors of education on such institutions within their respective districts. The boards shall advise the department on all matters connected with the provision of schools in their respective districts, shall receive and deal with applications for grants to farm schools, have the supervision of school premises, the administration of certain funds with regard to these premises, and shall consider any matter submitted to them by the committees or managing bodies of any such institution under their supervision.

Besides the school boards, school committees shall be constituted to take the place of the school committees established by Ordinance No. 7 of 1903, (d) and who will consist of not less than five or more than seven members, to be elected for every public school by those parents resident within the school district or within three miles of the boundaries thereof, who at the time of the election have one or more children on the roll of such schools. The powers and duties of such committees shall be to report to the board on matters concerning the welfare or proficiency of the school, the maintenance and repair of the school buildings and premises, the appointment, suspension or dismissal of teachers, and any other duties which may be delegated to them.

All teachers who hold certificates of licences to teach, issued by the Educational Department, and all teachers on the regular teachers' staff are to be engaged under contract. The teachers are to be appointed by the Director upon the recommendation of the school board after their

(d) See *supra*, p. 446.



consultation with, and as far as possible upon their being recommended by, the committee or managing body of the school where a vacancy occurs, but the Director is not absolutely bound by such recommendation of the board.

Further provisions of the Act regard the moneys necessary for the department and schools and the general provisions regarding grants in aid, power to expropriate or reserve lands for public schools, and the power of the Colonial Secretary to make such regulations as will be necessary for the carrying out of the Act.

**Land and Agricultural Bank.**—No. 26 provides for the establishment and amendment and control of the Transvaal Land and Agricultural Bank. This Bank shall be controlled by a Board of Management consisting of five members to be nominated by the Governor. The Board shall appoint a manager of the Bank, who shall be the chief executive officer thereof, his appointment and the amount of his salary to be subject to confirmation by the Government. The appointment of all other officers and clerks of the Bank shall be made by the Board on the recommendation of the manager and with the approval of the Governor. The manager and every member of the staff to give security for the faithful discharge of their duties.

The business of the Bank shall be to advance money on mortgage on the following classes of land, viz. freehold land, quit-rent land, and land held under the Occupation Farms Ordinance, No. 25 of 1904, (e) and such advances to be made for the purpose of effecting improvements, for the purchase of stock and plant of all kinds, and agricultural requirements generally, for paying off existing liabilities on land, for paying expenses incidental to the sub-division of land held in undivided shares, for the establishment and promotion of agricultural and rural industries, and for the purchase of land for any of the purposes described above by a person or number of persons whose financial resources are deemed adequate to carry on a business described therein.

The funds of the bank shall be £2,500,000 sterling, to be advanced by the loan raised under the Transvaal Guarantee Land Act, 1907, and to be repaid by the Bank to the Government by way of a sinking fund.

The kinds of loans which the Bank will be able to grant shall be (1) advances on mortgage of sums not less than £50, and not more than £2500, the security to exceed 60 per cent. at least of a fair agricultural or pastoral value of the land, the loans to be for a limited period not exceeding five years if payable at the end in a lump sum, or not exceeding twenty-five years if repayable by instalments; (2) to

(e) See *supra*, p. 462.

co-operative societies and on securities on any raw or manufactured produce which is not perishable and other security which is not immoveable property. The purpose of these advances shall be the erection of storehouses or the execution of water storage and irrigation works, and for schemes of land improvement, or the establishment or promotion of any rural or agricultural industry, the loan not to exceed £2500 and to be advanced for a period not exceeding twenty-five years, repayable by instalments.

Provisions are made for the due regulation of these loans and their repayment, the keeping of proper accounts by the Board and their audit.

The schedules set out the covenants to be applied in every mortgage on the part of the borrower, the scale of valuation fees, and the scale of fees and costs for preparing the mortgage or pledge.

**Land Settlement.**—No. 37 amends the law relating to land settlement and provides rules for the Transvaal Land Settlement Board, which has been instituted in s. 52 of the Constitution Letters Patent. All the scheduled land for settlement to be vested in the Board as from May 1, 1907, and every debt present and future owing to the Board by the settler to be a first charge upon the holding of such settler and upon all movable property thereon, as if such debt were a debt owing to the Government.

In Part II. the powers are set out of the Board as to the settler and the holding. The Board may expend money on the property the subject of the settlement, remit payment due by the settler, alter or amend the conditions of the contract, extend the time for repayment and adjustment of the instalments, grant a re-valuation of the holding, let additional land and sub-divide holding, purchase additional land for the benefit of any settler, grant permission to the settler to sell his stock, sell or purchase from the settler stock held by him, alter the licence into a lease, and establish buildings and works.

Part III. sets out the terms which are deemed to be necessary under the lease, the conditions for the repayment of advances, the conditions of Crown grants to settlers, and the reservation of minerals on behalf of the Government.

The Act further validates certain agreements and acts of the Board since May 1, 1907.

**Arms and Ammunition** (No. 10).—The Arms and Ammunition Ordinance, No. 13 of 1902 (*f*) is entirely repealed and replaced by this present Ordinance.

The possession of arms is subject to the holding of a licence, which

(*f*) See *supra*, p. 439.

is strictly personal. All arms for which licences are issued are marked and a register is kept of all licences. The importation of rifles and rifle ammunition is subject to an importer's licence. The dealing in arms and ammunition in the Colony requires a dealer's licence. The dealer's licence is attached to certain premises, but can be removed to other premises after proper notice has been given, and may be transferred to other holders under certain conditions. On the premises in a conspicuous place notice of the licence must be given to the public. Licensed dealers must keep registers which are open to the inspection of any police officer not below the rank of a sergeant. A special permit is required by a licensed dealer for the transfer of any arms and ammunition from his premises to any other place in or outside the Colony.

Power has been reserved to the Governor to prohibit the sale and importation or transfer of arms and ammunition, while the importation and possession of cannon and cannon ammunition is altogether prohibited. Penalties have been provided for selling arms to natives and coloured persons.

The Act further contains clauses for the full carrying out of these provisions and for the proper administration thereof.

**Infectious Diseases : Leprosy.**—No. 5 amends the Leprosy Ordinance No. 23 of 1904, (*g*) so as to provide power for the Colonial Secretary to allow under certain circumstances segregation of lepers in places outside the Colony.

**Diseases among Cattle.**—No. 17 amends certain provisions of the Cattle Disease (East Coast Fever) Ordinance, No. 38 of 1904, (*h*) relating to the prohibition of transfer or mortgage of farms until the costs of fencing the same have been paid.

**Dogs.**—No. 23 consolidates (*i*) and amends the law relating to the registration and control of dogs outside the area of municipalities. The Act provides for the registration of dogs and issue of a badge for same to their owners. It gives power to the administration to destroy dogs which trespass or are found without badges.

**Ostriches.**—No. 30 amends the Game Preservation Ordinance No. 6 of 1905, (*k*) and prohibits the exportation of ostrich eggs save to colonies or territories with reciprocal legislation. Any contravention of the Act to be punished with imprisonment with or without hard labour for a period of not less than one and not exceeding two years.

**Johannesburg.**—No. 27 amends the Vrededorp Stands Ordinance,

(*g*) See *supra*, p. 461.

(*h*) See *supra*, p. 461.

(*i*) It repeals certain Volksraad Resolutions of the years 1897, 1891, 1893, and 1893.

(*k*) See *supra*, p. 464.



No. 31 of 1906, transferring the freehold title of these stands from the Government of the Colony to the Municipal Council of Johannesburg and by the Municipal Council to the registered holders of these stands, subject to the conditions set out in the Act.

**Excise and Customs.**—No. 9 imposes an excise duty on beer brewed in the Colony and a customs duty on beer brewed in and imported from any Colony, territory, or state belonging to any Customs Union with the Transvaal.

END OF VOL. II.















